

COUNCIL REPORT 21 APRIL 2009

TITLE: [PR-PC] Development Application DA08/1170 for a Two (2) Lot Subdivision at Lot 1 DP 1073137, No. 19 & 43 Turners Road Wardrop Valley

ORIGIN:

Development Assessment

FILE NO: DA08/1170 Pt 1

SUMMARY OF REPORT:

Council is in receipt of a development application to undertake a two (2) lot rural subdivision of a 41.7 hectare parcel of land zoned 1(a) Rural in Wardrop Valley.

The proposed subdivision will result in the following configuration:-

Proposed Lot 1: Having an area of approximately 2.7 hectares and a frontage of approximately 155 metres to Turners Road. This proposed lot also contains an existing dwelling house constructed prior to the introduction of planning controls in 1964 with access off Turners Road.

Proposed Lot 2: Having an area of approximately 38.9 hectares and a frontage of approximately 150 metres to Sleepy Hollow Road. This proposed lot contains an existing dwelling house constructed prior to the introduction of planning controls in 1964 with access off Turners Road.

The purpose of the subdivision is to achieve separate titles for the two (2) existing detached dwellings which are presently located on the subject land. It is considered the proposal is contrary to the objectives of the State Environmental Planning Policy Framework and the Local Environmental Planning Policy Framework for the fact that within the 1(a) zone a dwelling house is prohibited unless on an allotment of minimum size of 40 hectares, or referred within Clause 57 of the Tweed LEP 2000. The applicant, in essence, has attempted to avoid this requirement by seeking the use of existing use rights, therefore creating a prohibition. Also, the proposed subdivision will potentially alter the agricultural potential of the site and surrounding land through the creation of a rural residential block which is likely to lead to future land use conflict and reduce the potential of the existing allotment that currently exceeds the minimum allotment size.

RECOMMENDATION:

That Development Application DA08/1170 for a two (2) lot subdivision at Lot 1 DP 1073137, No. 43 Turners Road Wardrop Valley No. 19 Turners Road Wardrop Valley be refused for the following reasons:

- 1. Pursuant to Section 79C(1)(a)(i) the development proposal has not demonstrated compliance with the development standard as being unreasonable or unnecessary in accordance with State Environmental Planning Policy No. 1 – Development Standards**
- 2. Pursuant to Section 79C(1)(a)(i) the development proposal has not demonstrated due consideration or compliance with State Environmental Planning Policy (Rural Lands) 2008 as the proposal will result in:**
 - development being incompatible with surrounding agricultural uses,**
 - potential to create land use conflicts**
 - the proposed subdivision not supporting or enhancing the agricultural production of the site**
- 3. Pursuant to Section 79C(1)(a)(i) the development proposal has not demonstrated due consideration or compliance with the 1(a) zone objectives within Clause 11 of the Tweed Local Environmental Plan 2000, as the proposed development does not:**
 - protect the rural character and amenity;**
 - prevent the unnecessary fragmentation or development of land which may be needed for long-term urban expansion.**
- 4. Pursuant to Section 79C(1)(a)(i) the development proposal in seeking a subdivision for a residential purpose is not consistent with Clause 20(2)(a) of the Tweed Local Environmental Plan 2000, as the proposed Lots are below the minimum requirement of 40 hectares.**
- 5. Pursuant to Section 79C(1)(c) the development site is not considered suitable for the development as proposed.**
- 6. Pursuant to Section 79C(1)(e) the proposed development will result in prohibited development with dwelling houses located on undersized allotments that do not enjoy dwelling entitlements.**
- 7. Pursuant to Section 79C(1)(e) the proposed development, is not within the public interest as the development would create two undersized lots in the 1(a) Rural zone.**

REPORT:

Applicant: Mr I Chambers
Owner: Mr IM Chambers and Mrs R Wolf
Location: Lot 1 DP 1073137, No. 43 Turners Road Wardrop Valley No. 19
Turners Road Wardrop Valley
Zoning: 1(a) Rural
Cost: 0.00

BACKGROUND:

Council is in receipt of a development application to undertake a two (2) lot rural subdivision of a 41.7 hectare parcel of land zoned 1(a) Rural in Wardrop Valley.

The proposed subdivision will result in the following configuration:-

Proposed Lot 1: Having an area of approximately 2.7 hectares and a frontage of approximately 155 metres to Turners Road. This proposed lot also contains an existing dwelling house constructed prior to the introduction of planning controls in 1964 with access off Turners Road.

Proposed Lot 2: Having an area of approximately 38.9 hectares and a frontage of approximately 150 metres to Sleepy Hollow Road. This proposed lot contains an existing dwelling house constructed prior to the introduction of planning controls in 1964 with access off Turners Road.

The purpose of the subdivision is to achieve separate titles for the two (2) existing detached dwellings which are presently located on the subject land. Clause 11 of the Tweed Local Environmental Plan 2000 allows for a minimum lot size of 40ha in the zone. Proposed lots 1 and 2 do not comply with the development standard for subdivision in the zone. Therefore, as both dwellings were lawfully constructed prior to the introduction of planning controls on 29 May 1964, for the dwellings to remain lawful, existing use provisions will only allow the continuation of previous rights to have a dwelling house on each new parcel of land as the lots will not enjoy a dwelling entitlement.

The application was originally submitted in the form of proposed Lot 1 being 1.2 hectares and proposed Lot 2 being 40.5 hectares. As Lot 2 was not complying with Clause 11 an objection under State Environmental Planning Policy No. 1 – Development Standards (SEPP 1) and the concurrence of the Department of Planning (DoP) was required.

Concurrence was granted by the DoP on the condition that Council requires that the proposed Lot 1 be enlarged to include all land south of the currently proposed northern boundary. The DoP believe that the enlargement of this proposed lot will lessen the potential for land use conflict to occur between the larger agricultural holding (proposed Lot 2 – approx 39.2 ha) and the smaller rural residential holding (proposed Lot 1 – approx 2.5ha).

In light of the comments from the DoP the applicant amended their plans to reflect the recommended lot configurations. As a result of the amendment, both allotments will be below the minimum lot sizes.

It is disagreed that by slightly enlarging Lot 1 will lessen the potential for land use conflict to occur between the larger agricultural holding, as the size of the lot is essentially still not large enough to undertake any substantial form of rural activity apart from being a rural residential lot. Also, there is no mechanism within the Tweed LEP 2000 which allows both lots being undersized to retain a dwelling entitlement, therefore creating a prohibited development. Allowing the subdivision of a conforming lot over 40 hectares with a dwelling entitlement to two lots which are below the minimum standard and do not have entitlements is considered to be bad planning practice and should not be applied.

In contrary to the DoP letter, it should also be noted that DoP issued Planning Circular/Practice Note on 31 March 2006 in relation to existing use rights. Within the circular, DoP state that the purpose of existing use rights are as follows:

'The existing use provisions aim to balance the potential hardship and dislocation that could result if landowners or occupiers were required to discontinue uses no longer permitted under current planning controls, against the need to transition to the new and preferred planning regime for the area.'

The above comments clearly indicate that existing use rights are not aimed at allowing the knowing creation of prohibited developments, but rather should only be created when planning controls are superseded and the existing use is no longer permissible. In addition, the DoP planning circular states:

'With Councils now being required to review their LEPs within the next 5 years consistent with the Standard Instrument for LEPs, it is expected that throughout NSW the number of developments with existing use rights will grow as the overall number of zones are reduced and zoning provisions are updated. This could potentially undermine the benefits from the planning systems reforms... Where feasible, Councils will be encouraged to identify development that would have existing use rights and include 'permitted additional uses' on that land in their LEP, so that the land use is no longer prohibited (in effect, removing existing use rights).'

The above quotation from DoP clearly indicates a direction to minimise the creation of existing use rights. In light of the above, whilst one of the lots may be close to Council's lot size requirements, the creation of two undersized lots results in undesirable development and is not supported.

The main issues for consideration relates to the fact that within the 1(a) zone a dwelling house is prohibited unless on an allotment of minimum size of 40 hectares, or referred to within Clause 57 of the Tweed LEP 2000. The applicant, in essence, has attempted to avoid this requirement by seeking the use of existing use rights, therefore creating a prohibition. Also, scattered and unplanned rural living development like the proposed development has been discouraged within this zone in the Tweed Shire and encouraged on rural land that is less productive and more suitable for 'rural residential' living. The proposed subdivisions configuration and proposed lot sizes will have a significant impact on the agricultural potential of the

site establishing rural land use conflicts which will result in the rural character and amenity being compromised.

These matters are discussed within the body of the report.

Site History

The existing lot is greater than 40ha, therefore is considered to enjoy a dwelling entitlement under Clause 11 of the LEP.

The dwelling on proposed Lot 1 was constructed in 1957. The applicant claims it is currently lawful and will remain lawful after the subdivision due to existing/continuing use rights.

The dwelling on proposed Lot 2 was constructed in 1936 and is acknowledged as being lawful given the dwelling entitlement afforded the allotment.

The applicant has submitted with the Statement of Environmental Effects two (2) statutory declarations which both attest the dates for the erection of the dwelling houses and that both dwellings have been permanently occupied since the date of erection.

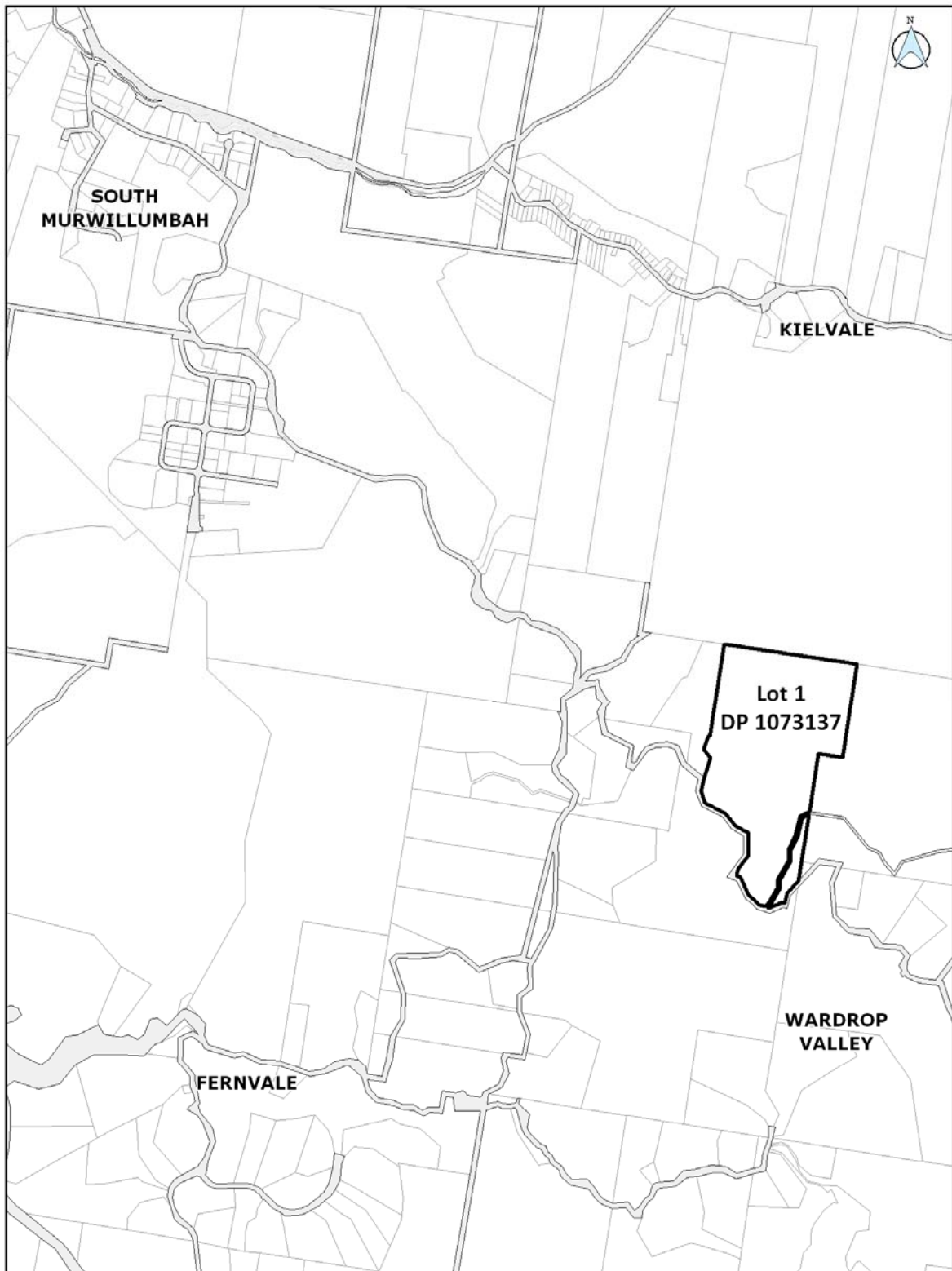
A statutory declaration from the previous land owner of the subject property states that she owned the property for 28 years from 1977 until 2005. The declaration states that within that time, Council always issued a separate residential rates notice for the dwelling house on proposed lot 1 as opposed to a rural rates notice.



The second statutory declaration was from an adjoining land owner who has lived on the property all his life attests that the dwelling on proposed lot 2 was erected in 1957 and the other dwelling on proposed lot 2 was built sometime during the 1930's.

Also, a search of Council's rates books from 1960 was conducted to confirm the legitimacy of the declarations. The rates books state that there was a house and a cottage erected on the property, therefore confirming that there were two dwelling houses erected on the property at that particular date.

Based on the above evidence, it is considered that both dwellings are lawful and attract the protection of Section 106 and are entitled to continue pursuant to Section 107 of the Environmental Planning and Assessment Act 1979.

SITE DIAGRAM:



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<p>Tel: (02) 6670 2409 Fax: (02) 6670 2483</p>	<p>File: Z:\GIS_Jobs\Site Plan.Wor</p>	<p>Author: J. Batchelor Date: 04/March/2009 Scale: 1:20,000 Sheet: 1 of 1</p>

The subject land is described as Lot 1 DP 1013137 and is known as No. 19 and No. 43 Turners Road, Wardrop Valley. The subject site is of an irregular shape with a northern boundary of 584.4m, an eastern boundary of approximately 935.3m, a southern boundary of approximately 395.6m and a western boundary of 1085.6m providing a total site area of 41.7 hectares.

As discussed, the site contains two dwellings. One dwelling is located in close proximity to the alignment of Turners Road frontage with the other located further north of the property. The central part of the site comprises a steeper elevated feature which runs across the site generally in an east west direction.

The surrounding area is characterised by a mixture of small and large rural holdings. The site has a dual property number reflecting the fact that the property is improved with two dwelling houses.

CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

(a) (i) The provisions of any environmental planning instrument

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

The proposed development is considered not to be consistent with the aims of the Tweed Local Environmental Plan. The proposed development is not considered to be consistent with the vision of the shire “to manage growth so that the unique natural and developed character of the Tweed Shire is retained.” The proposed development is for a two lot subdivision which does not comply with the development standards contained within the Tweed Local Environmental Plan 2000.

The proposed development is significantly not complying with the Tweed LEP, therefore it is considered not to be in keeping with the aim of the plan in particular to the aim that all development should be restricted to certain land within a zone and that specific development requirements should apply to certain land in a zone or to a certain type of development.

Clause 5 - Ecologically Sustainable Development

The proposed development is considered to be generally compliant with the principles of ecological sustainable development. The proposed development is on cleared land with two dwelling houses improved on the site. Therefore the proposed development is considered to have minimal impact on the environment and in keeping with the precautionary principle, inter generational equity and the conservation of biological diversity and ecological integrity.

Clause 8(c) - Cumulative Impact

Clause 8(1)(c) Cumulative Impact: The proposed development if approved would be considered to create an adverse cumulative impact in the Shire. The Tweed Shire currently has a number of properties that have similar situations by having two existing detached dwelling houses erected on the allotment, however the allotment only enjoys one dwelling entitlement. By approving this application would encourage other non conforming applications to be lodged. Therefore, the proposed development if approved would establish an adverse cumulative impact in the Shire.

Clause 11 - Zone objectives

The subject land is zoned 1(a) Rural. The objectives of the 1(a) Rural zone include:-

Primary objectives

- *to enable the ecologically sustainable development of land that is suitable primarily for agricultural or natural resource utilisation purposes. and associated development.*
- *to protect rural character and amenity.*

Secondary objectives

- *to enable other types of development that rely on the rural or natural values of the land such as agri- and eco-tourism.*
- *to provide for development that is not suitable in or near urban areas.*
- *to prevent the unnecessary fragmentation or development of land which may be needed for long-term urban expansion.*
- *to provide non-urban breaks between settlements to give a physical and community identity to each settlement.*

The proposed subdivision's configuration and proposed lot sizes will have a significant impact on the agricultural potential of the site particularly for Lot 2 as Lot 1 will be used for the purpose of a rural residential allotment. This configuration will lead to establishing rural land use conflicts which will result in the rural character and amenity being compromised.

Also, as discussed earlier in this report, Clause 11 of the TLEP states, for both 1(a) & 1(b2) zones that dwelling houses are permissible if each is on an allotment of a least 40 hectares or on an allotment referred to in Clause 57. This would result in an automatic prohibition of the existing dwelling houses, forcing their continued use to be protected by existing use rights.

The proposal is therefore not consistent with the relevant zone objectives.

Clause 15 - Essential Services

Water supplies are currently provided to each dwelling house by rainwater tanks. Onsite effluent treatment and disposal systems exist for each dwelling house.

Electricity and telecommunications are connected to both existing dwellings on the land. No additional infrastructure or physical works are required to service the proposed subdivision.

Clause 20 - Subdivision

This clause requires a minimum allotment size of 40 hectares in the 1(a) zone. Proposed lots do not comply with this development standard. An objection under State Environmental Planning Policy No.1 has been prepared by the applicant in this regard and is addressed later in this report.

North Coast Regional Environmental Plan 1988

Clause 12: Impact on agricultural activities

The council shall not consent to an application to carry out development on rural land unless it has first considered the likely impact of the proposed development on the use of adjoining or adjacent agricultural

land and whether or not the development will cause a loss of prime crop or pasture land.

The proposed subdivision will affect the continuance and potential productive sustainable activities to be undertaken on the property as the portion of land that forms part of the proposed rural residential allotment is part of the properties best agricultural viable land for rural activities such as horticulture or cattle grazing.

State Environmental Planning Policy No. 1 - Development Standards

This Policy provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act.

Where development could, but for any development standard, be carried out under the Act (either with or without the necessity for consent under the Act being obtained therefore) the person intending to carry out that development may make a development application in respect of that development, supported by a written objection that compliance with that development standard is unreasonable or unnecessary in the circumstances of the case, and specifying the grounds of that objection.

As established, the proposed subdivision requires a variation to the 40 hectare minimum allotment size stipulated under Clause 20(2)(a) of the LEP.

Clause 20(2)(a) states:-

- (2) Consent may only be granted to the subdivision of land:
 - (a) within Zone 1(a), 1(b2), 7(a), 7(d) or 7(l) if the area of each allotment created is at least 40 hectares

The variation is required in relation to both proposed Lots being under the 40 hectare development standard. As discussed, the purpose of the subdivision is to achieve separate titles for the two (2) existing detached dwellings which are presently located on the land.

The underlying objectives of the development standard are to prevent the fragmentation of rural land, ensure the scenic and natural environments are protected and maintain agricultural viability.

In accordance with the new 5 part test outlined by Chief Justice Preston in recent decision *Wehbe v Pittwater Council* (2007) NSW LEC 827. He rephrased the assessment process as follows:

1. *The applicant must satisfy the consent authority that "the objection is well founded" and compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.*

The applicant provided the following reasons as to why the standard was considered to be unreasonable and unnecessary in their particular case-

- The proposed subdivision will not result in any additional dwellings. Therefore the proposal cannot affect the continuance or aggregation of sustainable agricultural uses.
- Since the dwellings already exist and no new dwelling entitlements will be created, the proposed subdivision will not generate any additional pressure to allow isolated residential development.
- The proposal does not alter the existing built form in any way and therefore cannot affect the ecological or scenic values of the land.
- The proposal is not located in the Tweed's water supply catchment and therefore cannot affect the quality of the water supply catchment.
- The proposal is consistent with the relevant zone objectives as it involves two existing non-conforming dwelling houses which are not each located on a lot with an area of at least 40 hectares. Rather the situation provides a residential density of one dwelling house per 20.85 hectares. The proposed subdivision will convert one of the nonconforming dwellings to a conforming use as it will be located on an allotment of greater than 40 hectares.
- The proposal will result in only one of the existing dwelling houses remaining in the situation where it will not be located within its own allotment of at least 40 hectares.
- No additional dwelling entitlements will be created as a result and given no physical works are involved; there will be no change to the character and amenity of the area. The proposed subdivision will not alter the status-quo.
- Compliance with the 40 hectare development standard would preclude a logical subdivision of the site to provide separate titles for each of the established dwellings.
- The proposed subdivision will not create any additional dwelling entitlements and will not involve any site works or alterations to the existing site conditions. Therefore the proposed development will not alter the management or conservation of agricultural land as compared to the existing situation.
- In this case, where the proposed development would not alter the status-quo, compliance with the development standard would hinder attainment of the EP&A Act's object to promote the orderly and economic use and development of land in accordance with the zoning of that land and its physical capabilities.

Comment:

It is considered that the reasons outlined above, do not attest that the development standard as being unreasonable or unnecessary as the proposed subdivision will potentially alter the agricultural potential of the site and surrounding land through the creation of a rural residential block which is likely to lead to future land use conflict and reduce the potential of the existing allotment that currently exceeds the minimum allotment size.

2. *The consent authority must be of the opinion that “granting of consent to that development application is consistent with the aims of this Policy as set out in clause 3”.*

The aims of the policy are as follows:-

“This Policy provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act”.

- (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
- (ii) the promotion and co-ordination of the orderly and economic use and development of land,*

Comment:

The proposed development will affect the proper management, conservation of natural resources and the promotion and co-ordination of the orderly and economic use of the land as it is fragmenting productive rural land for the purpose of creating a rural residential allotment. The proposed departure is significant and granting consent to such would be inconsistent with the aims of the Policy.

3. *The consent authority must be satisfied that a consideration of the matters in clause 8(a) “whether non-compliance with the development standard raises any matters of significance for State or regional environmental planning; and (b) the public benefit of maintaining the planning controls adopted by the environmental planning instrument.*

Comment:

The proposed non-compliance raises matters for state and regional planning. On a state level the DoP have gazetted a new SEPP (Rural Lands) 2008, which gives directions for Councils when considering an application to which the SEPP applies the Council must consider the inappropriate siting of rural residential development and residential uses in rural areas often resulting in land use conflict between rural and non rural uses that impact on farm activities. The SEPP requires that before granting consent Council must consider any impacts the development will have on other uses in the locality. The proposed arguments given by the applicant do not achieve these directions as they are creating a rural residential allotment within a primary rural locality. This has been discussed later within this report.

Preston also expressed the view that there are five different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*

Comment:

Whilst the comments are noted from the applicant, the creation of two undersized allotments is contrary to the objectives of the zone. The proposal is likely to create conditions that will instigate rural land use conflict and the fragmentation of rural land.

The existence of two houses currently on the site is not a strong determining factor in the decision to vary the lot size. Currently the lot exceeds the minimum lot size and with both dwellings on one lot the opportunity for rural land use conflict is non-existent, therefore the SEPP 1 objection is not well founded.

2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

Comment:

The submission of the SEPP 1 objection does not allow the retention of a dwelling entitlement for the existing dwellings and the Tweed LEP 2000 involves no mechanism to enable this to be debated or objected to, essentially it is a prohibition, not a development standard. Notwithstanding the underlying objective to limit subdivision on rural land seeks to protect rural character and amenity therefore this proposal is directly relevant.

3. *The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

Comment:

If compliance was required, the underlying purpose would be achieved.

4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*

Comment:

The creation of a non-conforming land use and creating two undersized allotments is seen to and ability of the Tweed LEP 2000 and accordingly, it is not considered reasonable or necessary to vary from the minimum lot sizes established within Clause 20(2)(a), through the creation of two

undersized lots from a lot that currently exceeds the minimum lot size will set undesirable precedent.

5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

Comment:

The zoning of the area is appropriate and the surrounding locality has rural character and agricultural uses have been established.

State Environmental Planning Policy (Rural Lands) 2008

The land is within the 1(a) Rural Zone and the provisions of this SEPP apply to the proposed development.

Clause 7 Rural Planning Principles

The principles are stated and addressed as follows:

The Rural Planning Principles are as follows:

- (a) the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,*
- (b) recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State,*
- (c) recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development,*
- (d) in planning for rural lands, to balance the social, economic and environmental interests of the community,*
- (e) the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land,*
- (f) the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,*
- (g) the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,*
- (h) ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.*

The proposed development is contrary to the rural subdivision principles in the SEPP as the subdivision will affect the continuance and potential productive sustainable activities to be undertaken on the property as the portion of land that forms part of the proposed rural residential allotment is

part of the properties best agricultural viable land for rural activities such as horticulture or cattle grazing.

Clause 8 - Rural Subdivision Principles

The principles are stated and addressed as follows:

The Rural Subdivision Principles are as follows:

- (a) the minimisation of rural land fragmentation,*
- (b) the minimisation of rural land use conflicts, particularly between residential land uses and other rural land uses,*
- (c) the consideration of the nature of existing agricultural holdings and the existing and planned future supply of rural residential land when considering lot sizes for rural lands,*
- (d) the consideration of the natural and physical constraints and opportunities of land,*
- (e) ensuring that planning for dwelling opportunities takes account of those constraints.*

Lifestyle preferences including rural living opportunities are changing the traditional agricultural potential of large rural areas of the Tweed Shire and leading to fragmentation of productive agricultural land. Scattered and unplanned rural living development like the proposed development has been discouraged within this zone and encouraged on rural land that is less productive and more suitable for 'rural residential' living.

Clause 10 - Matters to be considered in determining development applications for rural subdivisions or rural dwellings

The matters to be considered in determining a development application are stated and addressed as follows:

- (1) This clause applies to land in a rural zone, a rural residential zone or an environment protection zone.*
- (2) A consent authority must take into account the matters specified in subclause (3) when considering whether to grant consent to development on land to which this clause applies for any of the following purposes:*
 - (a) subdivision of land proposed to be used for the purposes of a dwelling,*
 - (b) erection of a dwelling.*
- (3) The following matters are to be taken into account:*
 - (a) the existing uses and approved uses of land in the vicinity of the development,*
 - (b) whether or not the development is likely to have a significant impact on land uses that, in the opinion of the consent authority, are likely to be preferred and the predominant land uses in the vicinity of the development,*

- (c) *whether or not the development is likely to be incompatible with a use referred to in paragraph (a) or (b),*
- (d) *if the land is not situated within a rural residential zone, whether or not the development is likely to be incompatible with a use on land within an adjoining rural residential zone,*
- (e) *any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c) or (d).*

The surrounding land uses are rural holdings which are predominantly agricultural activities such as horticulture and cattle grazing. Also within this vicinity, there are a number of rural small holdings offering rural residential living scattered throughout. Many were approved as "concessional lots" and are generally 2 hectare allotments which have been excised from the larger adjacent holding similar to this proposal with no thought of the implications of this on the future land use conflict which will occur.

This notion of a rural lifestyle is engendered by an association with the pleasant character of the landscape rather than the potentially offensive noises, odours and operations which are the reality in the agricultural areas of the Shire. Increasing competition for the available land tends to intensify the agricultural practices at a particular site thereby increasing the potential for conflict with non-rural residents.

Given their historical connection with the adjacent farm and the commonly polarised nature of their respective use, the potential for conflict is great. The intent of the SEPP is to eliminate rural land use conflicts such as noise, odour, farm chemicals, light, visual amenity, dogs, stock damage and weed infestation, lack of understanding and lack of communication by removing provisions for these small rural residential allotments to be created. For Council to consider such development which is essentially the creation of a "concessional lot", this will be contrary to the provisions of the SEPP.

(a) (ii) The Provisions of any Draft Environmental Planning Instruments

Draft Tweed Local Environmental Plan - Amendment 21 - Vegetation Management

The aims and objectives of the draft Plan are as follows:

- To integrate the Tweed Local Environmental Plan 2000 with the New South Wales Natural Resource Management Reforms introduced by the State Government in 2003.
- To adopt a holistic and equitable approach for managing ecological process and significant areas in Tweed Shire that seeks to achieve environmental protection, economic development and improved social or cultural conditions.
- To conserve and enhance biological diversity, scenic quality and ecological integrity of the natural areas of Tweed Shire;
- To implement the Tweed Vegetation Management Strategy 2004.

Draft amendment 21 of the Tweed Local Environmental Plan 2000 is relevant to the subject site but does not have any direct impact upon the proposal.

(a) (iii) Development Control Plan (DCP)

Tweed Development Control Plan

A5-Subdivision Manual

Council's Development Engineer has reviewed the application with respect to the provisions of Section A. The application is considered satisfactory provided certain road upgrading works are undertaken along Turners Road. Also, through the assessment stage, it was noted that the existing Turners Road Pavement wanders in and out of the designated road reserve. Appropriate road widening (and road closures as requested by the applicant) would be required, to ensure that the road exists within the nominated road reserve.

(a) (iv) Any Matters Prescribed by the Regulations

Bushfire

The application required an Integrated Referral to the NSW Rural Fire Service due to the bushfire prone nature of the land. In a response dated 11 December 2008, a Bushfire Safety Authority was granted subject to certain conditions of consent.

(b) The likely impacts of the development and the environmental impacts on both the natural and built environments and social and economic impacts in the locality

Investigation of the likely impacts of the proposal upon the built or natural environment is not considered to be required in light of the concerns detailed earlier in this report.

(c) Suitability of the site for the development

Given the earlier comments detailed within this report, the subject land is not suitable for the development as proposed, as it would create a prohibition.

(d) Any submissions made in accordance with the Act or Regulations

The application did not require notification under Council's Notification Policy.

(e) Public interest

The proposed subdivision is considered to compromise the public interest as it is not in accordance with both State and Local planning policies and the subdivision will create two undersized allotments.

OPTIONS:

1. Determine the application in accordance with the recommendation.
2. Support the proposal and request appropriate conditions for approval be submitted to the next Council Meeting.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should the applicant be dissatisfied with the decision of the determination the applicant may determine to lodge an appeal with the Land & Environment Court.

POLICY IMPLICATIONS:

Should the recommendation of this report not be upheld, no direct policy implications will occur, however a precedent will be set for similar applications to be approved.

CONCLUSION:

It is considered the proposal is contrary to the objectives of the State Environmental Planning Policy Framework and the Local Environmental Planning Policy Framework. The proposed subdivision will potentially alter the agricultural potential of the site and surrounding land through the creation of a rural residential block which is likely to lead to future land use conflict and reduce the potential of the existing allotment that currently exceeds the minimum allotment size.

UNDER SEPARATE COVER/FURTHER INFORMATION:

*To view any "**non confidential**" attachments listed below, access the meetings link on Council's website www.tweed.nsw.gov.au or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).*

Nil.

COUNCIL REPORT 21 JULY 2009

TITLE: [PR-PC] Development Application DA08/1170 for a Two (2) Lot Subdivision at Lot 1 DP 1073137, No. 19 & 43 Turners Road Wardrop Valley

ORIGIN:

Development Assessment

FILE NO: DA08/1170 Pt1

SUMMARY OF REPORT:

At its meeting on 21 April 2009, Council considered an application to undertake a two (2) lot rural subdivision of a 41.7 hectare parcel of land zoned 1(a) Rural in Wardrop Valley.

Council Officers recommended refusal of the application. The Council resolved as follows:

“Recommended that the application be deferred until Council had a full and extensive workshop on farming with regard to the requirement of the 40 hectare allotment and request the director Planning and Regulation to sit with the applicant in further negotiations prior to bringing this matter back to Council”

Since the previous meeting a Councillor workshop was held, the Department of Planning was re-consulted and the applicant has submitted additional information.

A copy of the original report is an annexure to this agenda item.

This report summarises these events and recommends the application should be refused as the DA does not comply with the Tweed Local Environmental Plan 2000 (Tweed LEP 2000), as the proposal results in unnecessary land fragmentation and is contrary to the standard determination of similar applications.

It is also imperative that developers adhere to planning controls as part of their contribution towards achieving more sustainable development. This philosophy was determined "best practice" as a result of the Tweed Futures and Tweed 4/24 Strategic Plan (2004-2014).

The subject application represents a significant variation of the planning controls and would be contrary to Council's strategic aims. Accordingly the subject application is recommended for refusal. The applicant has not demonstrated that the 40ha development standard is unnecessary or unreasonable.

RECOMMENDATION:

That Development Application DA08/1170 for a two (2) lot subdivision at Lot 1 DP 1073137, No. 19 & 43 Turners Road, Wardrop Valley be refused for the following reasons: -

- 1. Pursuant to Section 79C(1)(a)(i) the development proposal has not demonstrated compliance with the development standard as being unreasonable or unnecessary in accordance with State Environmental Planning Policy No. 1 – Development Standards**
- 2. Pursuant to Section 79C(1)(a)(i) the development proposal has not demonstrated due consideration or compliance with State Environmental Planning Policy (Rural Lands) 2008 as the proposal will result in:**
 - development being incompatible with surrounding agricultural uses,**
 - potential to create land use conflicts**
 - the proposed subdivision not supporting or enhancing the agricultural production of the site**
- 3. Pursuant to Section 79C(1)(a)(i) the development proposal has not demonstrated due consideration or compliance with the 1(a) zone objectives within Clause 11 of the Tweed Local Environmental Plan 2000, as the proposed development does not:**
 - protect the rural character and amenity;**
 - prevent the unnecessary fragmentation or development of land which may be needed for long-term urban expansion.**
- 4. Pursuant to Section 79C(1)(a)(i) the development proposal in seeking a subdivision for a residential purpose is not consistent with Clause 20(2)(a) of the Tweed Local Environmental Plan 2000, as the proposed Lots are below the minimum requirement of 40 hectares.**
- 5. Pursuant to Section 79C(1)(c) the development site is not considered suitable for the development as proposed.**
- 6. Pursuant to Section 79C(1)(e) the proposed development will result in prohibited development with dwelling houses located on undersized allotments that do not enjoy dwelling entitlements.**
- 7. Pursuant to Section 79C(1)(e) the proposed development, is not within the public interest as the development would create two undersized lots in the 1(a) Rural zone.**

REPORT:

Applicant: Mr I Chambers
Owner: Mr IM Chambers and Mrs R Wolf
Location: Lot 1 DP 1073137, No. 19 & 43 Turners Road, Wardrop Valley
Zoning: 1(a) Rural
Cost: Nil

BACKGROUND:

Council is in receipt of a development application to undertake a two (2) lot rural subdivision of a single 41.7 hectare parcel of land zoned 1(a) Rural in Wardrop Valley.

The existing single allotment currently accommodates two dwellings both constructed prior to the introduction of planning controls in 1964.

One dwelling would take the existing dwelling entitlement (as the site is currently above 40ha), and the other house is presently lawful by way of existing use rights.

The proposed subdivision will result in the following configuration:-

Proposed Lot 1: Area of approximately 2.7 hectares and a frontage of approximately 155 metres to Turners Road.

This proposed lot would accommodate one of the existing dwelling houses with access off Turners Road.

However as the allotment would be under 40ha the new allotment would not benefit from a dwelling entitlement and the existing house would need to rely on existing use rights.

Proposed Lot 2: Having an area of approximately 38.9 hectares and a frontage of approximately 150 metres to Sleepy Hollow Road.

This proposed lot would accommodate one of the existing dwelling houses with access off Turners Road.

However as the allotment would be under 40ha the new allotment would not benefit from a dwelling entitlement and the existing house would need to rely on existing use rights.

The proposed application seeks to change a current lawful situation into two undersized allotments neither of which would comprise a lawful dwelling entitlement, however, both existing houses would rely on existing use rights for the ongoing use of the property for the purposes of a single dwelling house.

The application was reported to the Council meeting on 21 April 2009 of which Council Officers recommended refusal of the application. Council at its meeting resolved the following:

“Recommended that the application be deferred until Council had a full and extensive workshop on farming with regard to the requirement of the 40 hectare allotment and request the director Planning and Regulation to sit with the applicant in further negotiations prior to bringing this matter back to Council”

Since the previous meeting, a workshop for the Councillors was held on 19 May 2009 regarding the application. At this workshop, the Councillors requested that the application be referred back to the Department of Planning (DoP) for reconsideration of the original proposal submitted by the applicants i.e. proposed Lot 1 being 1.2ha and proposed Lot 2 being 40.5ha.

The application was again referred to the DoP on 20 May 2009 (a copy of the letter is **attached**), of which the DoP advised that their position on the matter has not changed from the previous letter dated 9 January 2009 (a copy of the letter is **attached**).

The applicant also was given the opportunity to submit additional information of which was submitted to Council on 2 July 2009 (a copy of the letter is **attached**). The following is a summary of the additional information provided by the applicant.

Clause 20 of Tweed Local Environmental Plan 2000

There is no doubt that the proposal will result in fragmentation of ownership of land. All subdivision ultimately results in the fragmentation of ownership of land.

The objectives of Clause 20(1) of the LEP are not to prevent any fragmentation, rather it is to prevent only fragmentation that has potential to create certain adverse impacts.

The relevant questions to properly assess whether the objectives of the standard are achieved notwithstanding non-compliance with the standard are as follows:

- a) *Will the proposed subdivision result in fragmentation that has potential to adversely affect the continuance or aggregation of sustainable agricultural units?*
- b) *Will the proposed subdivision result in fragmentation which would generate pressure to allow isolated residential development in an uncoordinated manner?*
- c) *Will the proposed subdivision result in any adverse impact upon the ecological or scenic values of the land?*
- d) *Will the proposed subdivision result in any adverse impact upon the area of Tweed’s water supply quality?*

It is submitted that the proposed development answers favourably to the abovementioned questions and is therefore consistent with the objectives for subdivision in the Rural 1(a) zone as set out in Clause 20(1) of the Tweed LEP 2000.

Clause 20(2) sets a minimum lot size in the Rural 1(a) zone of 40hectares. This control is a Development Standard and is not a prohibition. Development

Standards can be varied by the application of State Environmental Planning Policy No. 1 (SEPP 1).

SEPP 1 Objection

The applicant addresses 3 key matters:

1. *Well founded objection*

The proposed subdivision will excise a relatively small area of land (only 2.7 hectares) which is already constrained for the purposes of agriculture due to the existing features of the land including the steeply sloping topography, the shape and dimensions of the land at that point, the alignment of Turners Road and Smarts Road which make aggregation impractical and the existence of the detached dwelling on that area of the site.

It is clear that the proposed subdivision therefore will not adversely affect the continuance of, or aggregation of, sustainable agricultural units as the area comprising proposed Lot 1 as it is presently is unsuitable for agriculture and is the location of an existing detached dwelling.

The subject dwelling on proposed Lot 1 will always remain on the site and therefore, whether the land is unsubdivided or not, it will render that part of the site unsuitable for aggregation as part of any wider agricultural unit.

The proposed subdivision will not result in any additional dwellings or dwelling entitlements. Therefore the proposal cannot be considered to generate any pressure to allow isolated residential development as the dwellings already exist.

2. *Consistency with the aims of SEPP 1*

Compliance with the 40 hectare development standard would preclude a logical subdivision of the site to provide separate titles for each of the established dwellings which are separately identified as No. 19 and No. 43 Turners Road.

The proposed subdivision will not create any additional dwelling entitlements and will not involve any site works or alterations to the existing site conditions. The small part of the site shown as proposed Lot 1 is presently constrained by steeply sloping topography, the shape and dimensions of the land at that point, the alignment of Turners Road and Smarts Road and the existence of the detached dwelling on that area of the site, all of which make aggregation impractical. For these reasons the proposal will not alter the current or future agricultural potential of the site. Therefore the proposed development will not alter the management or conservation of agricultural land as compared to the existing situation.

In this case, where the proposed development would not alter the status quo, compliance with the development standard would hinder attainment of the EP&A acts object to promote orderly and economic use and development of land in accordance with the zoning of that land and its physical capabilities.

3. *Consistent with SEPP 1 (Public benefit of maintaining the standard)*

In considering whether the proposal creates any matters of Regional or State planning significance or raises any issues to the public benefit of maintaining the standard the following points are relevant.

- *No change in land use results from the subdivision;*
- *No physical disturbance to the landform or vegetation results from the subdivision;*
- *Two lawful detached dwelling houses exist on the land;*
- *The existing dwelling houses have existed on the subject site prior to the introduction of planning controls and are presently not each within an allotment of at least 40 hectares;*
- *No additional dwelling entitlements will be created;*
- *The shape of each lot and common boundary location provides a logical and efficient layout;*
- *The proposed subdivision will create lots that are similar to the size of other lots in the immediate locality;*
- *No impacts can be created by the proposed on the surrounding area.*

Additional Council Assessment

Despite the submission of the applicant's additional information, the assessment of the application still raises a significant number of key issues which are discussed below.

Compliance with 1(a) zone objectives

The proposed subdivision's configuration and proposed lot sizes will have a significant impact on the agricultural potential of the site particularly for Lot 2 as Lot 1 will be used for the purpose of a rural residential allotment which completely disregards the primary objective of the 1(a) zone which is to protect the rural character and amenity.

The applicants have stated that the proposal will not alter the current or future agricultural potential of the site. Therefore the proposed development will not alter the management or conservation of agricultural land as compared to the existing situation.

This justification is not agreed with as the proposed configuration will clearly lead to establishing rural land use conflicts by creating a rural residential allotment which will result in the rural character and amenity being compromised.

Also, Clause 11 of the Tweed LEP 2000 states, both lands within the 1(a) zone that dwelling houses are permissible if each is on an allotment of a least 40 hectares or on an allotment referred to in Clause 57. This would result in an automatic prohibition of the existing dwelling houses, forcing their continued use to be protected by existing use rights and is therefore not consistent with the relevant zone objectives.

Compliance with the objectives of Clause 20 of the Tweed LEP 2000

The objectives of Clause 20 of the Tweed LEP 2000 state the following:

- *to prevent the potential for fragmentation of ownership of rural land that would:*
 - (i) *adversely affect the continuance or aggregation of sustainable agricultural units, or*
 - (ii) *generate pressure to allow isolated residential development, and provide public amenities and services, in an uncoordinated and unsustainable manner.*
- *to protect the ecological or scenic values of the land.*
- *to protect the area of Tweed's water supply quality.*

It is considered that the additional information submitted by the applicant, still does not adequately attest that the development standard, Clause 20 of the Tweed LEP 2000 as being unreasonable or unnecessary.

The objective of Clause 20 specifically states that the 40 hectare minimum development standard is to prevent the potential for fragmentation of rural land that would adversely affect the continuance or aggregation of sustainable agricultural units. The proposed development is considered to be a fragmentation of rural land as the proposal would reduce the productive use of an existing farm through the creation of a fragmented concessional allotment which will likely lead to future land use conflict and reduce the potential of the existing allotment that currently exceeds the minimum allotment size.

The proposed subdivision's configuration and proposed lot sizes will also have a significant impact on the future agricultural potential of the site particularly for Lot 2 as Lot 1 will be used for the purpose of a rural residential allotment. This configuration will lead to establishing rural land use conflicts which will result in the rural character and amenity being compromised and will not result in a more efficient use of the land and therefore will not support the sustainable long term use of the land for agricultural activities.

Also, the proposed development is not facilitating a subdivision which is sustainable and appropriate to its intended use. The intended use of the land is for agriculture, however, the fragmentation of an existing rural property to create a rural residential lot would not be sustainable and appropriate for its use. The proposal is therefore contrary to the objectives of the 40ha standard given the ownership will be fragmented as a result of the proposal.

Implications for precedent

The proposed development if approved would be considered to create a precedent for similar developments in the Shire. The argument given by the applicant that the proposed subdivision cannot be considered to generate any pressure to allow isolated residential development as the dwellings already exist is no justification that this type of development would not establish an adverse cumulative impact within the Shire.

The Tweed Shire currently has a number of properties that have similar situations by having two existing detached dwelling houses erected on the allotment, however the allotment only enjoys one dwelling entitlement. In the past, Council has consistently maintained the development standard lot sizes established within Clause 20 of the Tweed LEP 2000 and by approving this application would undermine the integrity of the development standard and encourage other non conforming applications to be lodged.

Also, as lifestyle preferences including rural living opportunities are changing the traditional agricultural potential of large rural areas of the Tweed Shire and leading to fragmentation of productive agricultural land. Approval of the application will promote scattered and unplanned rural living development which will set an undesirable precedent and for this reason has been previously been discouraged by Council.

State and Regional Significance of this application

It is maintained that the proposed non-compliance raises significant matters for state and regional planning. On a state level the DoP have gazetted a new State Environmental Planning Policy (Rural Lands) 2008 (SEPP), which gives directions for Councils when considering applications at a regional level to which the SEPP applies the Council must consider the inappropriate siting of rural residential development and residential uses in rural areas often resulting in land use conflict between rural and non rural uses that impact on farm activities. The SEPP requires that before granting consent Council must consider any impacts the development will have on other uses in the locality.

It is considered that the proposed development will fragment rural land and contrary to the applicants arguments, would not create a more efficient use of the land. The use of a second dwelling can occur on the land without the subdivision of land, and the fragmentation of an existing rural holding is not appropriate. The proposed development will have economic and environmental implications as the land would have reduced economic viability as the optimum piece of agricultural land on the property would be fragmented. Therefore, the proposed development is not considered to be in the interests of the community as it will not result in the sustainable and responsible use of land and which is contrary to state and regional policy and local planning controls.

Strategic Context

Clause 4 of the TLEP nominates the aims of the plan which are: -

- (a) *to give effect to the desired outcomes, strategic principles, policies and actions of the Tweed Shire 2000+ Strategic Plan which was adopted, after*

extensive community consultation, by the Council on 17 December 1996, the vision of which is:

“The management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced”, and

- (b) *to provide a legal basis for the making of a development control plan that contains more detailed local planning policies and other provisions that provide guidance for future development and land management, such as provisions recommending the following:*
- (i) *that some or all development should be restricted to certain land within a zone,*
 - (ii) *that specific development requirements should apply to certain land in a zone or to a certain type of development,*
 - (iii) *that certain types or forms of development or activities should be encouraged by the provision of appropriate incentives, and*
- (c) *to give effect to and provide reference to the following strategies and policies adopted by the Council:*
- *Tweed Heads 2000+ Strategy*
 - *Pottsville Village Strategy, and*
- (d) *to encourage sustainable economic development of the area of Tweed compatible with the area’s environmental and residential amenity qualities.*

The Tweed Shire 2000+ Strategic Plan (published in 1997) was reviewed as part of the Tweed Futures program in 2003.

The Tweed Futures program has subsequently resulted in the production of Tweed 4/24 Strategic Plan 2004 -2014.

This document in conjunction with The Tweed Strategic Plan 2000+ forms the strategic framework and visionary direction for the Tweed Shire. They set overarching goals that will help manage the Tweed into the future. In the Tweed 4/24 Strategic Plan 2004 -2014 the following should be noted:

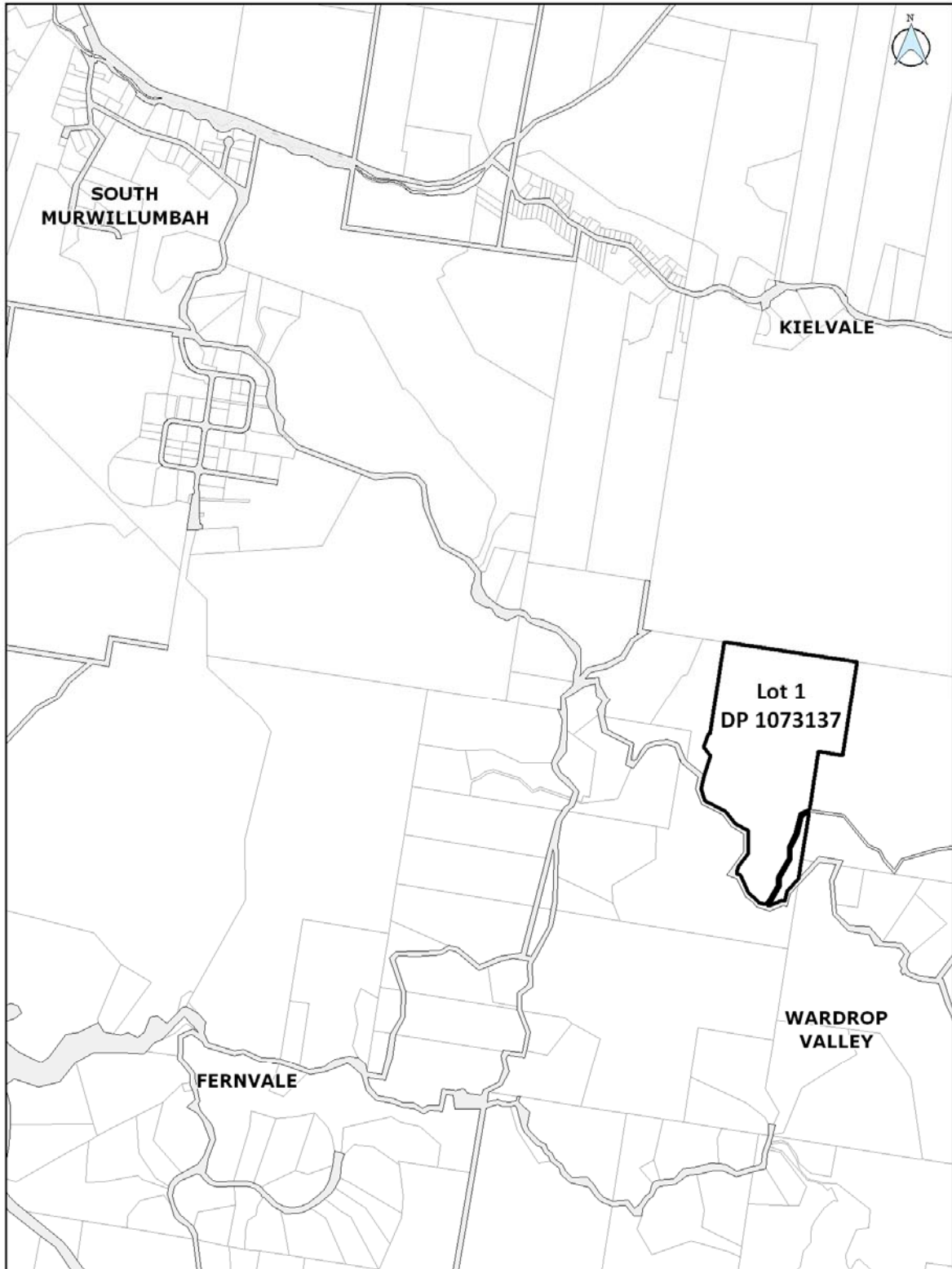
Effective control of new development and redevelopment is a key element of Tweed 4/24. Plans and development controls will be implemented fairly and rigorously.



Controls will include ‘best practice’ provisions to minimise adverse impacts of development. Developers will be expected to adhere to planning controls as part of their contribution towards achieving more sustainable development.

Some departures from plans and guidelines are inevitable as circumstances change, but these will be kept to a minimum and fully justified. Full public disclosure of relevant information is essential.

Accordingly the subject application is recommended for refusal given the significant departure proposed.

SITE DIAGRAM:



<p>© TWEED SHIRE COUNCIL 2009 Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be Responsible for any Errors, Omissions or Inaccuracies in respect to the information supplied in this map. DO NOT SCALE COPY ONLY - NOT CERTIFIED P.O. Box 816 Murwillumbah, NSW, 2484</p>	<p><i>Tweed Shire Council</i></p> <p>DA08/1170 - Lot 1 DP 1073137</p> <p>No. 19 & 43 Turners Road, Wardrop Valley</p>	<p>Site Plan</p>  
<p>Tel: (02) 6670 2409 Fax: (02) 6670 2483</p>	<p>File: Z:\GIS_Jobs\Site Plan.Wor</p>	<p>Author: J. Batchelor Date: 04/March/2009 Scale: 1:20,000 Sheet: 1 of 1</p>

OPTIONS:

1. Determine the application as per the recommendation and having regard to this report and the previous report dated 21 April 2009.
2. Support the proposal and request appropriate conditions for approval be submitted to the next Council Meeting.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should the applicant be dissatisfied with the decision of the determination the applicant may determine to lodge an appeal with the Land & Environment Court.

POLICY IMPLICATIONS:

Should the recommendation of this report be uphold, no direct policy implications will occur, however a precedent will be set for similar applications to be approved.

CONCLUSION:

It is considered the proposal is contrary to the objectives of the State Environmental Planning Policy Framework and the Local Environmental Planning Policy Framework. The proposed subdivision will potentially alter the agricultural potential of the site and surrounding land through the creation of a rural residential block which is likely to lead to future land use conflict and reduce the potential of the existing allotment that currently exceeds the minimum allotment size.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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1. Planning Committee report of 21 April 2009 relating to DA08/1170 (ECM 3395309)
 2. Letter from Tweed Shire Council seeking further information from the Department of Planning dated 20 May 2009 (ECM 3395331)
 3. Letter from the Department of Planning dated 3 June 2009 (ECM 3395337)
 4. Letter from Darryl Anderson Consulting dated 29 June 2009 providing further information (ECM 3395339)
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NOTICES OF MOTION 18 AUGUST 2009

TITLE: [NOM] [PR-PC] Development Application DA08/1170 for a Two (2) Lot Subdivision at Lot 1 DP 1073137, No. 19 & 43 Turners Road, Wardrop Valley

NOTICE OF RESCISSION:

Councillors W Polglase, J van Lieshout and K Skinner move that the Planning Committee recommendation at Minute Number P99, subsequently adopted at the Ordinary Council Meeting at Minute Number 135, in relation to Item P2 - [PR-PC] Development Application DA08/1170 for a Two (2) Lot Subdivision at Lot 1 DP 1073137, No. 19 & 43 Turners Road, Wardrop Valley, as follows:

".... that Development Application DA08/1170 for a two (2) lot subdivision at Lot 1 DP 1073137, No. 19 & 43 Turners Road, Wardrop Valley be refused for the following reasons:-

1. *Pursuant to Section 79C(1)(a)(i) the development proposal has not demonstrated compliance with the development standard as being unreasonable or unnecessary in accordance with State Environmental Planning Policy No. 1 – Development Standards*
2. *Pursuant to Section 79C(1)(a)(i) the development proposal has not demonstrated due consideration or compliance with State Environmental Planning Policy (Rural Lands) 2008 as the proposal will result in:*
 - *development being incompatible with surrounding agricultural uses,*
 - *potential to create land use conflicts*
 - *the proposed subdivision not supporting or enhancing the agricultural production of the site*
3. *Pursuant to Section 79C(1)(a)(i) the development proposal has not demonstrated due consideration or compliance with the 1(a) zone objectives within Clause 11 of the Tweed Local Environmental Plan 2000, as the proposed development does not:*
 - *protect the rural character and amenity;*
 - *prevent the unnecessary fragmentation or development of land which may be needed for long-term urban expansion.*
4. *Pursuant to Section 79C(1)(a)(i) the development proposal in seeking a subdivision for a residential purpose is not consistent with Clause 20(2)(a) of the Tweed Local Environmental Plan 2000, as the proposed Lots are below the minimum requirement of 40 hectares.*
5. *Pursuant to Section 79C(1)(c) the development site is not considered suitable for the development as proposed.*
6. *Pursuant to Section 79C(1)(e) the proposed development will result in prohibited development with dwelling houses located on undersized allotments that do not enjoy dwelling entitlements.*

7. *Pursuant to Section 79C(1)(e) the proposed development, is not within the public interest as the development would create two undersized lots in the 1(a) Rural zone."*

be rescinded.

TITLE: [NOM] [PR-PC] Development Application DA08/1170 for a Two (2) Lot Subdivision at Lot 1 DP 1073137, No. 19 & 43 Turners Road, Wardrop Valley

NOTICE OF MOTION - Cr W Polglase:

Councillor W Polglase moves:

That with regard to DA08/1170 for a Two (2) Lot Subdivision at Lot 1 DP 1073137, No. 19 & 43 Turners Road, Wardrop Valley, Council officers bring forward conditions for approval for consideration by Council.
