

QUEANBEYAN-PALERANG REGIONAL COUNCIL

Council Meeting Attachment

23 MAY 2018

ITEM 12.2 REZONING AND DWELLING ELIGIBILITY REQUESTS

ATTACHMENT 3 LOT 13 DP 727614 AND LOT 1 DP 219747 URILA ROAD

Lot 13 DP 727614 and Lot 1 DP 219747, Urila Road, Urila

Request

The property owners have requested that Lot 13 DP 727614 and Lot 1 DP 219747 be zoned E4 Environmental Living (Attachment 4). The lots are shown in Map 2 and 3 below:



Map 2 Location of Lot 13 DP 727614 and Lot 1 DP 2196747 and associated features

Description of the land

Both lots are accessed from Urila Road, approximately 35 kilometres from Queanbeyan. The lots are zoned RU1 Primary Production under the PLEP with a minimum lot size of 80 hectares. As seen from the map below, they are adjacent to land zoned E4 Environmental Living (separated by Urila Road). Lot 13 DP 727614 is 15.48 hectares and Lot 1 DP 219747 is 15.18 hectares resulting in a total of 30.66 hectares.



Map 3 Lot 13 DP 727614 and Lot 1 DP 2196747 land use zones

On Lot 13 and Lot 1, the highest point of the land is approximately 850 metres with the lowest point being 830 metres. This is higher than Urila Road in the vicinity of the lots and there is some slope on the land.

There is a watercourse on the western side of each lot and both are wholly within the Googong Drinking Water Catchment. This triggers clause 6.4 Drinking water catchments. The objectives of this clause are:

- (a) to protect drinking water catchments by minimising the adverse impacts of development on the quality and quantity of water entering drinking water storages,
- (b) to maintain water quality and the natural environment in the Sydney, Googong and Captains Flat drinking water catchments.

Each of the lots are predominantly covered in native vegetation, some of which is shown in the PLEP. This requires the consideration of clause 6.3 Terrestrial Biodiversity in relation to development consent for development. The objectives of the clause are:

- (1) The objective of this clause is to maintain terrestrial biodiversity by:
 - (a) protecting native fauna and flora, and
 - (b) protecting the ecological processes necessary for their continued existence, and
 - (c) encouraging the conservation and recovery of native fauna and flora and their habitats.

The Palerang native vegetation layer shows there is native vegetation on the eastern side of Lot 1 and on Lot 13 on the western and eastern sides. Additionally, the entire area of both lots is shown on the Palerang Bushfire Prone Map.

Discussion

If rezoned to the land use zone E4 Environmental Living, a minimum lot size of 6 hectares would be applied as this would be consistent with the adjacent E4 Environmental Living zone and similar areas under the PLEP. As the two lots are 30.66 hectares in total this would provide a maximum of five lots. It should be noted that this does not take into account internal roads and any heritage or environmental requirements.

Page 12 of the Palerang Rural Lands Strategy 2016 – 2036 states the following:

4.1 RURAL RESIDENTIAL LAND

There has been significant demand for rural residential land away from urban areas particularly in the western part of the local government area and such demand, while slowing in recent times, nonetheless is continuing. Section 3.1 of the Rural Lands Study Report analyses the demand and concludes that while there is no shortage in the supply of land, Council needs to commence a process to increase supply over the next five years.

Of the various types of rural development opportunities, the small lot farming component is considered the category of least supply. Section 4 of the Discussion Paper explores that need and in sub-section 4.8 identifies some areas that Council could investigate to address such supply.

Any expansion of estate style rural development needs to be in areas where the current hard and soft infrastructure can be economically extended and funded by the new development.

For development options that do not require land for part-time commercial agriculture, it is important to ensure quality agricultural land is not wasted by being zoned for such use. Additional options such as hamlets may accommodate supply with less land demand. Areas for non-commercial agriculture related settlement should be confined to areas with agricultural classifications 4 or 5.

The impact of rural residential supply stocks requires ongoing monitoring. It is preferable that there is a co-ordinated approach to monitoring across the LGAs surrounding Canberra, given the interrelationship and impacts of the supply and demand of land across all of these LGAs.

Comment

- There is some land zoned E4 Environmental Living that is vacant in the area
- Urila Road is not sealed in this area and the infrastructure contributions and conditions of consent would not cover the cost of sealing the road. Combined with the additional vehicle movements, approximately six per lot and the expectation of people working in an urban area but living in a rural residential lot environment, using Council funds to seal the road is an opportunity cost for other parts of the local government area

Assessment against the Rural Lands Strategy

The Rural Lands Study criteria are:

Is the land an anomaly with regard to the current land use or are there other factors that warrant one-off support?

The land is not an anomaly in regard to the current land use. It is suggested that the inability to sell the land because it has a rural land use zoning does not provide a land use planning justification for rezoning the land to allow the subdivision of it into small lots.

If the proposal is not an anomaly or justified on special grounds as an ad hoc rezoning, the proposal must fit a broader pattern of logical extension of development. For example, fit a logical extension of an existing small properties zone or form part of a potential new zone.

As mentioned above, the land is adjacent to an existing E4 Environmental Living land use zone (separated by Urila Road). However, there appears to be vacant land in the existing area.

If it is possible to support the proposal, what ranking and timeline should be set for the particular proposal? Is there sufficient data from the applicant or should more be supplied to finalise a decision?

It is recommended that the proposal is not supported.

Will the development of the land be self-funding with regard to adequate road access, power and bushfire protection measures?

Urila Road is not sealed in this area and the infrastructure contributions and conditions of consent would not cover the cost of sealing the road. It is also likely that the cost of installing electricity would be considerable. As stated above, both lots are bushfire prone.

Does the proposal add benefit to the Queanbeyan-Palerang LGA i.e. not just a commuter satellite for Canberra?

The proposal does not add benefit to the local government area as the income from rates will not cover the cost of providing hard and soft infrastructure. However it is acknowledged that the social capacity of the area and local government area may increase through new residents.

Recommendation

That Lot 13 DP 727614 and Lot 1 DP 219747 not be rezoned E4 Environmental Living.

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ITEM 12.2 REZONING AND DWELLING ELIGIBILITY REQUESTS

ATTACHMENT 4 SUBMISSION LOT 13 DP 727614 AND LOT 1 DP 219747, URILA
ROAD, URILA

Palarang Council
PO Box 348
Bungendore NSW 2621
Email:
records@palarang.nsw.gov.au



6 March 2013

Dear Council

Thank you for the opportunity to review the draft Palarang LEP 2013. I and my wife own a property in the Urila Valley that comprises lots 49 DP 754913; Lots 12-13 DP 727614; Lot 1 DP 219747; and Lots 7, 8 and 43 DP 251886. These blocks of land are accessible either from Urila Road or Naylor Road.

My wife and I have owned most of the property for more than 40 years and have added to it over time. We have used the property for agricultural purposes, mostly grazing sheep and cattle.

Rezoning Lot 13 DP 727614 and Lot 1 DP 219747

A portion of the original property which is approximately 65 acres (26 hectares) (Lot 13 DP 727614 and Lot 1 DP 219747) is located on the other side of Urila Creek, making it inaccessible from the main section of the property. The only way stock can reach this portion of the property is to exit at the front gate and travel a couple of kilometers down Urila Road. A right of way is also located on this land allowing access to 3 additional properties via a road along the ridge line. The gate is always left open to facilitate their access. Half of this land was cleared over 35 years ago for a *Pinus radiata* forest and the rest remains degraded pasture with some remnant native regrowth. There are no dams on this land for stock.

Due to

- a) the isolation of these blocks from the rest of the property;
- b) its lack of water for stock (the fence line prevents access to the intermittent water supply in the creek);
- c) the degraded nature of the land which is unsuitable for general agriculture
- d) the small size of these blocks combined (26 hectares in total); and
- e) the fact that it provides access to three additional properties

have effectively made this portion of the property redundant for our purposes.

Lot 13 DP 727614 and Lot 1 DP 219747 are proposed to be zoned RU2 with a subdivision potential of 80 hectares as the minimum lot size, making it difficult for us to sell this land to one of the property owners who access their property via the right of way through our land.

It would be more logical if this land could be bought by existing owners of the adjoining property which use the right of way, or by the adjoining landowner who owns a substantial sized property to the east. In order for this to happen, we propose that these two lots be rezoned E4, like a sizeable portion of our property that abuts Urila Road on the other side of Urila Creek. This would enable a subdivision classification of AA2 which is a minimum lot size of 6 hectares.

We believe that this proposal would be consistent with the objectives of both the RU2 zone and the E4 Environmental Living zones, particularly in relation to encouraging sustainable land use and minimize conflict between land uses. This is because the land would effectively be amalgamated into existing adjoining farms.

Allow extensive agriculture to be permitted without consent in the E4 Zone

A large portion of our property is proposed to be rezoned to E4 Environmental Living. These areas comprise our best farming land. Over the years we have cropped paddocks and grazed sheep and cattle. We vary these uses based on season, water and grass availability and the market value of cattle and sheep. We appreciate that currently, as in the past, we have been able to make spontaneous decisions in relation to our land, based on the volatility of the market and the weather.

We have been advised by Council officers that we will have “existing use rights” to continue our farming practices as before. However, it is our understanding that the NSW legislation (Section 106 EPA Act 1979) in relation to “existing use rights” only refers to land uses that were lawfully commenced but have become prohibited under a rezoning; not uses that are “permitted with consent.”

We believe that in our circumstance, each time we decide to change from sheep to cattle, or decide to crop a paddock that may not have had a crop for 10 years, that we will have to go through the development application process. Such a process can take months, require a statement of environmental effects to be prepared and cost us application and assessment fees. Such a situation is untenable not only for us but surely for Council who will generate excessive work to assess such applications. Furthermore, farming requires the making of spontaneous decisions which would be impossible under these circumstances.

We note that the adjoining zones in the area which are E3 Environmental Management and RU2 Rural landscape (which our property is also zoned) both allow “Extensive Agriculture” without consent. This means that we can lawfully continue extensive agriculture on the more marginal agricultural parts of our land but not on our best agricultural land unless we seek consent from Council. This does seem ridiculous.

We understand that extensive agriculture as defined in the Standard Instrument for LEPs 2006 definition is:

- (a) the production of crops or fodder (including irrigated pasture and fodder crops) for commercial purposes,
- (b) the grazing of livestock for commercial purposes,
- (c) bee keeping,
- (d) a dairy (pasture-based).

Extensive agriculture is exactly what owners of land in the E3 zone currently do and is very conducive to rural residential uses, because all rural residential land owners effectively participate in one or more of these four activities listed above.

We also note that the objectives of the E3 and E4 zones are identical in relation to the following:

“To encourage the retention of the remaining evidence of significant historic and social values expressed in existing landscape and land use patterns”; and

“To encourage development that is visually compatible with the landscape”.

As these objectives are identical, how can the areas under these two zones within the Urila Valley be treated differently in terms of permitting extensive agriculture with or without consent, given that both landscapes have both had “extensive agriculture” on them for the last 80 years or more. requiring consent for extensive agriculture activities in the E4 zone and not in the E3 zone appears inconsistent with the objectives above. The existing landscape in the valley will NOT be able to be retained if land owners have such disincentives to continue their “extensive agricultural” uses and the landscape will change. People will either leave their paddocks fallow and overgrown, causing fire danger and aggravating weed infestations which is contrary to State Government policy, or choose to subdivide to the maximum potential where the land may as well become a suburb.

What incentive are you giving to people to retain the remaining evidence of the existing landscape?

We believe that as:

- a) rural residential in essence comprises “extensive agriculture” as well as homes,
- b) the existing zone for the valley permits extensive agriculture without consent;
- c) the adjoining proposed E3 and RU2 zones are intended to allow “extensive agriculture” without consent; and
- d) the objectives of the E4 zone are “to encourage the retention of the remaining evidence of significant historic and social values expressed in

existing landscape and land use patterns;" and "to encourage development that is visually compatible with the landscape;" that the draft LEP should be amended to include "extensive agriculture" as "permissible without consent" in the E4 zone.

Yours sincerely

A solid black rectangular box used to redact the signature of the sender.

QUEANBEYAN-PALERANG REGIONAL COUNCIL

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ITEM 12.2 REZONING AND DWELLING ELIGIBILITY REQUESTS

ATTACHMENT 5 LOT 56 DP 754915 CHERRY TREE LANE

Lot 56 DP 754915, Cherry Tree Lane

Request

The property owner has requested that all Lot 56 DP 754915 be zoned E4 Environmental Living so that the land can be subdivided into three lots. The lot is shown on the map below:



Map 4 Location of Lot 56 DP 754915



Description of the land

As seen from Map 5 the lot is zoned both E3 Environmental Management and E4 Environmental Living under the PLEP. The minimum lot size for E3 Environmental Management is 80 hectares and for E4 Environmental Living 6 hectares. The land is accessed from Cherry Tree Lane and is 20.24 hectares.

As also seen from Map 5 Cherry Tree Lane, is a right-of-way which runs through the lot. There is also a Crown road running through the lot. There are two dwellings and numerous sheds including a large indoor horse area on the lot. One dwelling is on the northern side of the lot and the other on the southern side.

Whilst the land contains some native vegetation, large areas have been cleared. The lot is not within a drinking water catchment included in the PLEP. The entire lot is shown on the Palerang Bushfire Prone Land map.

Background

A pre-development enquiry was submitted to Council in 2014 outlining a proposal for a three lot residential subdivision. Council replied in writing stating that the proposal was not permissible as the proposed lots would not meet the minimum lot size requirements. Each proposed lot needs to meet the minimum lot size covered by the area that it is within.

Prior to the gazettal of the PLEP, the lot was zoned 7(e) Environmental Protection and 1(d) Rural Residential. The zone boundary (adjacent to the crown road) was in the same location as it is now. This is the instance with the YLEP 1993 and YLEP 1986. It is the only lot in the area that has a dual land use zone.

Discussion

It is suggested that the rezoning of the lot to E4 Environmental Living with a minimum lot size of 6 hectares which in turn would allow a subdivision application for three residential lots would set an undesirable precedent as stated in other parts of this report and the report to Council in December 2017 (Item No. 12.4).

To enable the subdivision of the existing dwellings only, it would be necessary to rezone the lot E4 Environmental Living with a lot size of 9/10 hectares. Again, this would establish a precedent.

Assessment against the Rural Lands Strategy

Is the land an anomaly with regard to the current land use or are there other factors that warrant one-off support?

The land is not an anomaly, the dual land use zone has been in place for over thirty years. There are no other factors that support the proposed rezoning.

If the proposal is not an anomaly or justified on special grounds as an ad hoc rezoning, the proposal must fit a broader pattern of logical extension of development. For example, fit a logical extension of an existing small properties zone or form part of a potential new zone.

There is a well-established and substantial area of E4 Environmental Living adjacent to the lot. The creation of smaller lots is not unusual in this land use zone in this area. However, this needs to be balanced against the establishment of an undesirable precedent.

If it is possible to support the proposal, what ranking and timeline should be set for the particular proposal? Is there sufficient data from the applicant or should more be supplied to finalise a decision?

It is suggested that the proposal not be supported.

Will the development of the land be self-funding with regard to adequate road access, power and bushfire protection measures?

Development contributions would be payable and it would be a condition of consent that the road is upgraded. Neither of these would cover the cost of improving the roads leading to Cherry Tree Lane and it is likely that new property owners would expect road improvements.

In regard to bushfire, expert advice would need to be sought on risk and management strategies. However, it is suggested that given the lot is on an escarpment, the area is well

vegetated and the access road is long, it may be problematic managing people, animals and dwellings in a bushfire.

Does the proposal add benefit to the Queanbeyan-Palerang LGA i.e. not just a commuter satellite for Canberra?

The proposal does not add benefit to the local government area as the income from rates will not cover the cost of providing hard and soft infrastructure. However it is acknowledged that the social capacity of the area and local government area may increase through new residents.

Recommendation

That Lot 56 DP 754915 not be wholly zoned E4 Environmental Living.

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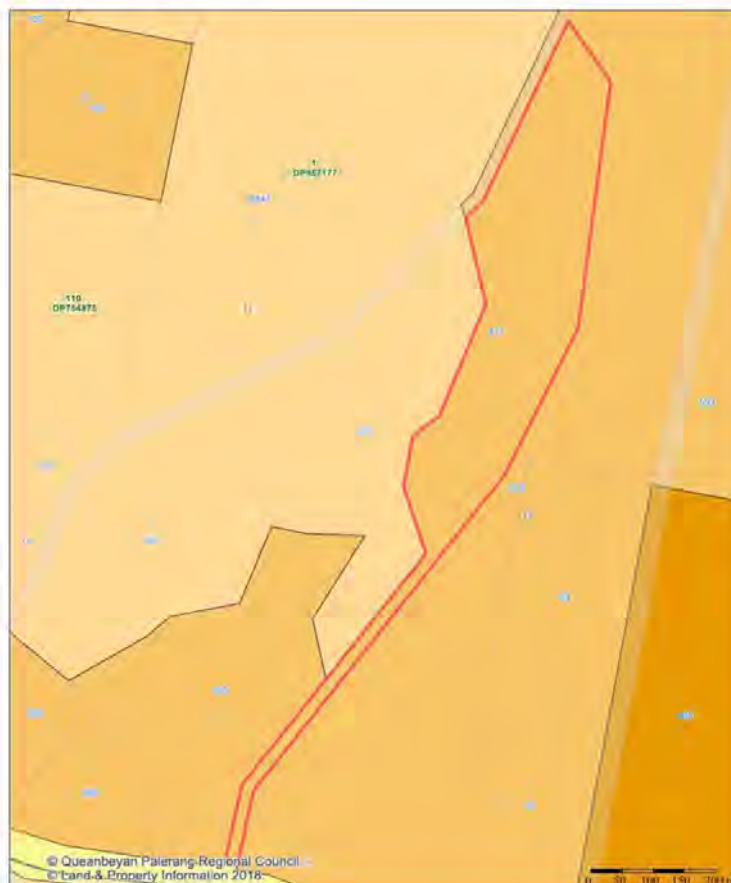
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ATTACHMENT 6 LOT 3 DP 777829, 417 CAPTAINS FLAT ROAD

Former Queanbeyan LGA Subdivision Request

Lot 3 DP 777829, 417 Captains Flat Road

The property owners have requested that Lot 3 DP 777829 be subdivided into two lots, in order to allow two existing dwellings on the land (dual occupancy) to have separate title. The subject lot is shown on Map 6 below:



Map 6 Lot 3 DP 777829 land use zones

Description of the land

The lot is zoned E3 Environmental Management under the *Queanbeyan Local Environmental Plan 2012* (the QLEP 2012). The minimum lot size for E3 Environmental Management in this area is 6 hectares. The land is accessed from Captains Flat Road and is 12.98 hectares. The subject site and surrounding are located in an area used primarily for rural residential purposes.

The property has a battle axe shape with a narrow access way being 620 metres long and 20 metres wide with a 5.5m metre wide track on the eastern edge. There are two dwellings on the property, one dwelling is on the northern side of the lot and the other on the eastern side. The property is almost all bushfire prone, has some biodiversity values and listed as subject to the lot averaging provisions under the QLEP 2012.

Background

As noted above, the site is subject to the 'averaging' provisions contained in clause 4.1C of QLEP 2012. This clause seeks to carry forward long-standing planning arrangements in respect of the subdivision of rural residential lands in the former Yarrowlumla LGA. These provisions were included in the QLEP012 and applied to those areas that were formally subject to *Yarrowlumla Local Environmental Plan 2002* and transferred to Queanbeyan City Council in 2004. This was done to ensure existing development options were preserved for owners of that land.

In summary, averaging seeks to provide for flexibility in minimum lot sizes, predominantly to promote a subdivision design that is more responsive to the topography and environmental constraints of the land to be subdivided. This is done by allowing lot sizes to be an average of 6 hectares each rather than a minimum of 6 hectares. Accordingly, lots as small as 2 hectares can be created provided this balanced by the creation of larger lots. However, the average lot size of all lots created by subdivision cannot be less than 6 hectares. QLEP 2012 and the PLEP 2014 both contain specific provisions that prohibit the resub division of lots that have been developed using averaging provisions in order to prevent any 'double-dipping'.

Research by Council staff confirms the subject land in this instance, was created by the subdivision of land formally zoned 1(d) Rural Residential land under clause 14(4) of *Yarrowlumla Local Environmental Plan 1986*. This occurred in 1988.

In 2002, *Yarrowlumla Local Environmental Plan 2002* replaced the 1986 plan and introduced clause 20(4) which prohibited any land previously subdivided under clause 14(4) of *Yarrowlumla Local Environmental Plan 1986* from being resub divided.

After local government amalgamations in 2004, the land was transferred to Queanbeyan City LGA. However the relevant land-use provisions continued under *Yarrowlumla Local Environmental Plan 2002* until the introduction of the QLEP 2012.

The former Palerang Council provided advice to Queanbeyan City Council at the time that any land subdivided under the 1986 controls should not be resub divided. As a result, all of these lands were identified as 'resulting lots' under QLEP 2012 and provisions included to ensure these lands not to be further subdivided (clause 4.1C(7)). *Palerang Local Environmental Plan 2014* has similar controls preventing the resub division of rural residential lands in Carwoola.

Previous contact with Council

A summary of previous contact with Council follows:

- The owners approach Council on 12 July 2013, asking staff for advice about the subdivision of the land (to enable the construction of a third dwelling). Records suggest Council then sent a letter to the owners on 23 July 2013 advising that there is no potential to further subdivide the land for the purposes of constructing a dwelling. However no signed copy of the letter exists so it cannot be confirmed that this correspondence was finally sent.
- The owners visit Council on 4 September 2017, speaking with the duty planner who suggested the subdivision of the land may have been permissible but required engagement of a surveyor.
- 11 September 2017 there is a visit to Council speaking with the duty planner who confirmed that the lot averaging provisions of the QLEP 2012 prevent subdivision of the subject land.
- The owners subsequently raised the issue with Council's staff of the Land-Use Planning team. The team confirms on 12 and 13 September 2017 that the lot averaging provisions

- of the QLEP 2012 prevent subdivision and undertake to carry out further research in respect of the history of the subdivision of the subject land.
- On 18 October 2017, the Land-Use Planning team confirms its research suggests the land was subdivided under the relevant provisions of *Yarrowlumla Local Environmental Plan 1986* at the time and cannot be further subdivided. Team also indicated it was unlikely to recommend to the Council that QLEP 2012 be amended to allow for subdivision of the subject land, largely due to the precedent it would create for ongoing subdivision in rural residential areas
 - On 24 January 2018, a letter from the owners requested a meeting with Mayor Tim Overall to resolve the matter. On 1 February 2018, the owners met with the Mayor and staff from the Land Use Planning Branch who re-affirmed that lot averaging provisions of QLEP 2012 prevent subdivision and that Council would not be progressing any amendment to the plan to allow for subdivision of the land.
 - The owners contact Land-Use Planning staff on 13 April 2018, requesting that the matter be formally put to the Council for a decision. Council planning staff advised owners that the matter will be referred to the elected Council meeting on 23 May 2018 and include this matter as part of this report.

Discussion

Whilst the subject land has an area of 12.98 hectares, it represents a lot that was created under the averaging provisions in QLEP 2012 and cannot be resub divided.

The amendments to the LEP requested by the owners of the land represent a significant policy change and potentially have implications for the future management of settlement and subdivision in existing rural residential communities throughout the LGA.

As noted, QLEP 2012 prohibits the resubdivision of land subject to the 'averaging' provisions. Accordingly an amendment to the plan would be necessary to allow the proposed subdivision, if supported by Council in this instance. The plan would need to be amended to either:

- Remove the 'hatching' that identifies this parcel of land as a resulting lot on the Lot Averaging Maps, or
- Removing the entire provision in the LEP that prohibits the resub division of, and so the only option available.

Neither approach is supported in this instance.

It is not considered appropriate to make a site specific amendment to the subject land in order to facilitate a one off subdivision for the landowners. As discussed above the current provisions give effect to a long-standing policy position in respect of the subdivision of rural residential lands in the former Yarrowlumla area, and a site specific change is likely to set an undesirable precedent for further subdivision requests of larger lots that have been created under the averaging provisions.

Further, removing the averaging provisions that prevent the resub division of larger lots from the plan entirely would undermine the planning logic and merit in respect of providing for averaging as a subdivision option.

There is an existing dual occupancy on the land and a subdivision would separately title the two existing dwellings. The owners have argued that there are already two dwellings on the site and this would not result in an increase in traffic or other impacts on the land. However this does not recognise that dual occupancy developments are permissible in the zone, and that each subsequent lot could potentially have another dual occupancy, representing a doubling in dwelling numbers.

This also has implications for additional on-site water extraction, biodiversity impacts (associated with new dwellings/outbuildings, fencing, domestic pets) as well as servicing requirements for Council. Rural residential settlement should be carefully planned according to the constraints of the land, and allowing additional unplanned rural settlement should not be supported.

The occupants have been informed on a number of occasions that the property is ineligible for further subdivision.

Recommendation

That the request not be progressed.