

# BEGA VALLEY SHIRE COUNCIL

## Transferable development potential

discussion paper

**DRAFT**

November 2005

(NB: This paper needs to be read in conjunction with the BVSC Rural Lands Review “draft strategic directions” paper. In particular see Strategy 2 Rural Settlement.)



**Disclaimer:**

“These are draft strategies. Council staff have prepared this draft discussion paper for public discussion purposes. At this stage of the process, the draft does not necessarily indicate any resolved policy position of the Council. Councillors will only resolve a position on this matter after careful consideration of all public submissions received and after amendments may have been affected to address concerns raised in submissions that Council feels are justified.

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# 1. What is a Transferable Development Potential (TDP) scheme?

As a general principle, a transferable development potential (TDP) is a planning tool that allows a development “potential” attached to one parcel of land to be transferred to another. It has been used to redirect development from lands identified for protection (for environmental or agricultural protection) to lands more suited to the development activity.

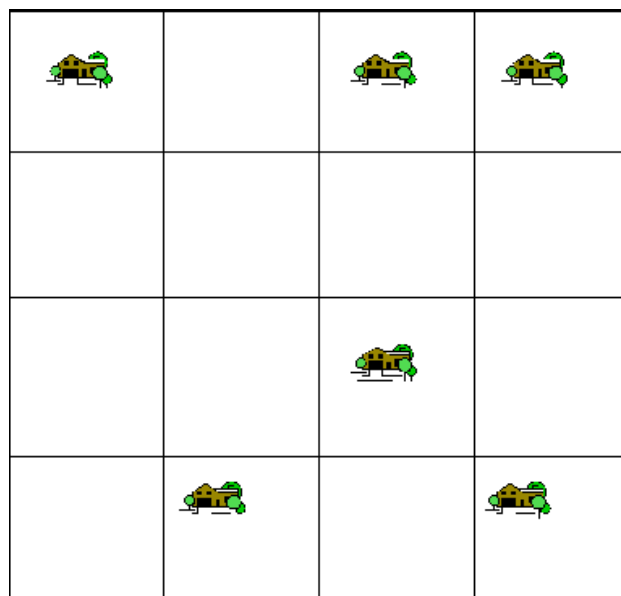
A TDP scheme has operated in the City of Sydney for many years for preservation of heritage buildings.

A TDP program would allow landowners to sever development potential from properties in areas identified for protection (agricultural land, in the Bega Valley case) and sell them to purchasers who want to increase the density of development in areas that have been selected as suitable for rural lifestyle activities.

The outcome is demonstrated below.

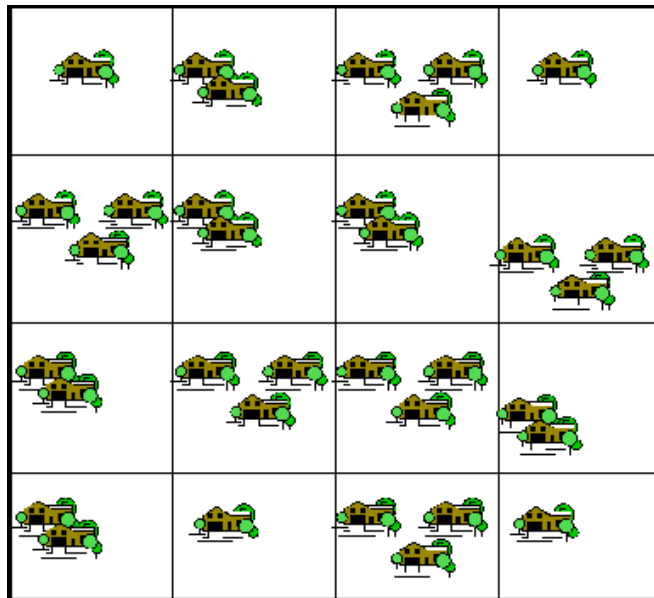
At first, Shire XYZ is completely devoted to agriculture (Figure 1). However, its farms face development pressure from a growing urban area not depicted on the illustration.

Figure 1 - Shire XYZ –Rural land used for agriculture



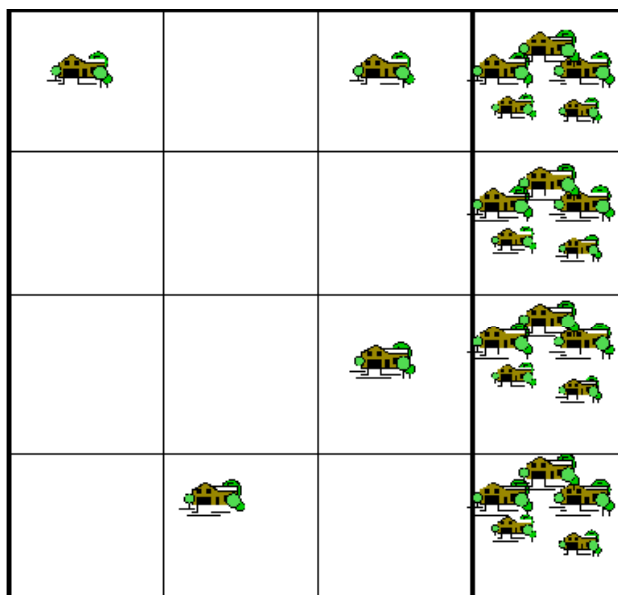
At some point the pressure makes it economically less attractive to retain the land for agricultural use. Indeed many farmers call the option to develop their land their ‘retirement plan’. When left to traditional zoning, market pressure often causes development across the whole landscape (Figure 2).

Figure 2 - Shire XYZ – Rural lifestyle settlement pattern likely under current LEP provisions



If Council XYZ decides (or is required) to protect its most important agricultural land for food and fibre production, the only option under traditional zoning, would have been to tell some farmers that they could not sell their land for development. However, Council XYZ could implement a TDP program where some farmers could sell their development potential to land owners in another part of the Shire (Figure 3).

Figure 3 – Shire XYZ Settlement pattern when development potential sold to a receiving area (right side).



## 1.1 Components of a Transferable Development Potential scheme

### 1.1.1 A donor area

In the case of Bega Valley Shire, this would be the land in the proposed Agriculture Zone (Fig. 4) where the principal objectives would be:

- to protect the land's potential for agricultural use
- to protect larger parcels of the Shire's most important agricultural land for agriculture, and
- to protect the potential for future agricultural land aggregation by controlling speculation.

### 1.1.2 A receiving area

The TDP concept would fit well into a planned settlement growth program.

The receiving areas for TDPs would be land most suited to rural lifestyle development and would not adversely impact on agriculturally valuable land or land with high biodiversity and heritage sensitivity.

Proximity to infrastructure and services such as Council maintained roads, school bus routes, public transport and garbage collection could also be important determinants in locating receiving areas.

Proximity to existing settlement nodes could reduce costs of providing services and infrastructure and future transport costs of residents.

With reference to Figure 4, receiving areas would be within the areas shown in light shading.

### 1.1.3 A market

The existence of a trading market for TDPs would be essential to the success of such a scheme. Sufficient land in the receiving areas would be required to promote competition for TDPs and fair market prices.

### 1.1.4 A strong land use zoning scheme

Within the receiving areas, the Shire's planning instruments (LEP, DCP and planning policies) should provide clear direction to developers about the conditions for approval while protecting the values of the area.

## 2. Why introduce a Transferable Development Potential scheme

Introduction of a TDP scheme is based on the following rationale:

- Bega Valley Shire's important agricultural land is under threat from rising land values, potential of land use conflict, fragmentation of agricultural land and a reduction in the area of good quality agricultural land for farming. Much of this threat may be attributable to the increasing demand for rural land for essentially residential purposes.
- Both Department of Planning (DOP) and Department of Primary Industries (DPI) have stated policies for the protection of the state's agricultural land. Both agencies see the continued development of concessional lots in the Rural 1(a) zone as a threat to agriculture. **The Minister (for Planning) requested on June 2002 that Council provide advice to the then PlanningNSW (now DOP), "in the process and timing it will commit to concessional lot provisions to be extinguished from the Bega Valley Shire LEP".** In reality, the threat may not be so much attributable to demand for land for residential purposes, as to where that land is being developed.
- A traditional zoning approach to controlling the development of rural land for residential purposes would have been to tell some landowners that they could not sell their land for development other than that permissible in that zone. Others would get the windfall of their properties being rezoned for rural small holdings.
- A TDP approach to dealing with concessional lot development could largely eliminate adverse impacts by relocating development to more suitable sites and within the context of planned rural growth.

### 2.1 What are some of the benefits and disadvantages of a TDP scheme?

#### **Benefits**

- a TDP scheme is a more equitable way of changing land use to protect agricultural land than traditional re-zoning
- a TDP scheme can compensate development potential holders for foregoing the opportunity to develop the potential on their own property
- a TDP scheme can support managed growth in rural areas
- a TDP scheme can be used to protect agricultural and environmental values

- a TDP scheme may assist in creating more efficient settlement patterns for the Shire by moving development potential to the lands most suited to each development activity
- TDP programs do not replace zoning, but can make strong land use regulations more equitable
- the outcome of a TDP scheme can be more permanent than zoning
- a TDP scheme is a means of using private funding (through the transfer and trading of development potential) to achieve community benefits such as helping farmers stay on the land
- can support and strengthen a zoning scheme
- encourages clustering of development that may result in infrastructure and service provision efficiencies
- may promote more sustainable development.

#### **Disadvantages/Risks**

- cost of administering the (complex) scheme
- would require public education
- uncertainty of demand from receiving areas
- the net return from the sale of a TDP may be less than the net return from developing the donor land. However, the TDP owner in the donor area would carry no cost of or risk from development
- a TDP scheme would have to be compulsory to provide the greatest degree of protection of agriculture and agricultural land
- the transfer of development potential may not be workable under the Environmental Planning and Assessment Act.

### 3. How might a TDP scheme work in the Bega Valley Shire?

1. Only development potential located on land identified as the Shire's most important agricultural land (proposed Agriculture zone Figure 4) would be eligible to participate in the TDP scheme.

The Rural Lands Review Draft Strategies Paper suggests that concessional lots located in the proposed "Small Lot Agricultural zone" (Rural Small Holdings Zone or Intensive Agriculture Zone in the Draft Standard LEP) may be developed in accordance with the standard provisions proposed by the NSW Department of Planning Draft Standard LEP, and that concessional lot development proposals in the fringes of the Shire's existing 1(a) zone (the proposed *Eco-living zone*), be subject to provisions applicable to the 7(d) Zone "*Environmental Protection General*" once re-zoning had occurred. This *Eco Living* zone would cater for those seeking a more remote rural lifestyle, an activity that already exists in the forested fringes of the Shire.

Planning provisions allowing for a minimum lot size of 40ha in the 7(d) Zone "*Environmental Protection General*" could reduce pressure on land for rural lifestyle activity in other areas of the Shire.

2. The capital value of concessional lot potential in the proposed "Agriculture Zone" would only be realised by selling the TDP and transferring it to a "*receiving*" area in the proposed "Smaller Lot Agricultural Zone". That is, the development of concessional lots would not be permitted in the proposed *Agriculture Zone*.
3. Potential could only be transferred to '*receiving areas*'.
4. Receiving areas would be identified by the following process:
  - receiving areas should be in the current 1(a) zone and outside land identified as the Shire's most important agricultural land
  - the following lands would be eliminated from consideration as receiving areas:
    - land identified as being of high biodiversity, landscape and heritage sensitivity;
    - land within 100m of a perennial stream;
    - land identified as having future urban growth potential;
    - land being physically unsuitable or potentially hazardous land ie.
      - o fire hazard rating of high or very high
      - o flood prone
      - o contaminated land
      - o southerly aspect between 135° and 225° with slopes of more than 10°
      - o slopes steeper than 20% (1 in 5)
      - o soil unsuited for on site sewage systems
      - o land without access to Council maintained roads.

The above process has been applied to a case study in the Wyndham area to identify potential receiver areas. Refer Chapter 1.1.2.

5. Minimum lot size in receiving areas would recognise that development would essentially be for residential use, rural lifestyle and hobby or part time agricultural production.

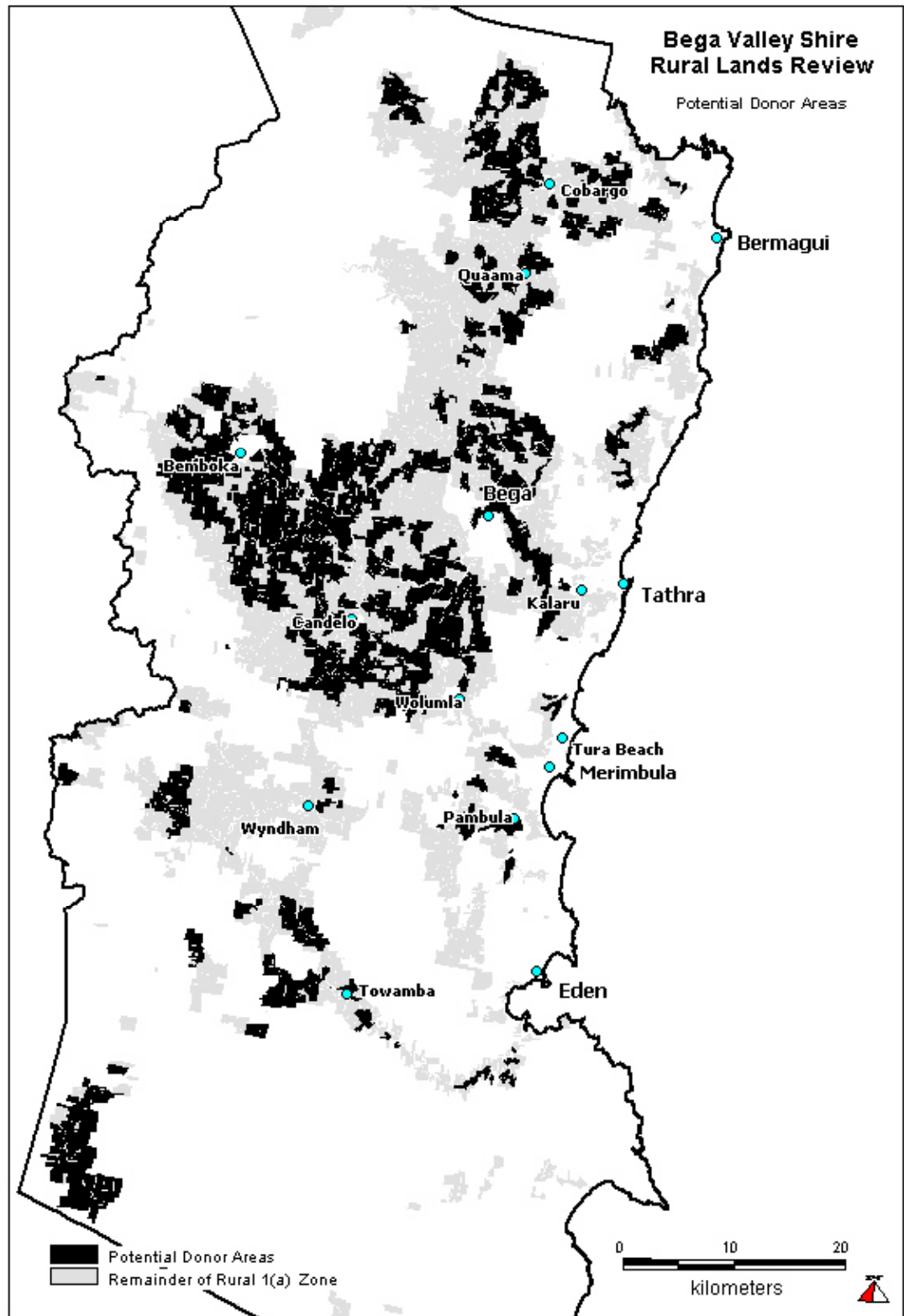
Lots for rural residential purposes should be the minimum size required to treat effluent on site and small enough that they can be economically managed using normal domestic machinery and skills. These might be most appropriately located close to the Shire's towns and villages (Suggested lot sizes 1-2ha).

Allotments for rural lifestyle activity, often involving some form of rural pursuit, should be large enough to sustain the keeping of animals and to justify the cost of purchasing farm type equipment to maintain and manage the land in an environmentally sustainable way. Say minimum 10ha good land more if land types are poor.

6. All concessional potential held in the donor area in the proposed *Agricultural Zone*, would be eligible to be transferred to a *receiving* area. In other words, owners of concessional lot potential would not have to go through a DA process to transfer their potential and realise their capital value. However, they would still need to obtain Council confirmation of the number of TDPs to which they were entitled. This approach is likely to result in more concessional lot potential being exercised (and developed) than would have been the case under Bega Valley Shire LEP 2002 provisions. Under current planning provisions, many concessional lot potential are unlikely to be developable because of environmental or economic constraints. This extra yield would flow to planned rural living areas.
7. Transfer principles may include the following:
  - a) all concessional lot potential in donor areas eligible to participate
  - b) concessional lot potential calculated using LEP 2002 provisions
  - c) prospective purchaser would bid for an potential "subject to DA". Once successful and a contract in place between bidder and transferor, the bidder would proceed with the DA for subdivision of the "transferred lots" for his land. If consent is issued, the purchaser can proceed in confidence and the vendor is bound to proceed by the contract. This process would require that no one could finalise the "purchase" of a potential until Council has issued consent at the prospective purchaser's site
  - d) a schedule of "transferred potential" would be attached to a new rural LEP.
8. Transfers of development potential would be contained within precincts/ localities/ sub-regions (such as described in the Bega Valley Shire *Rural Lands Review Issues Discussion Paper* – May 2004) that would be large enough to sustain supply and demand of potential and a market for their sale.
9. The TDP scheme would apply for a period of 10 years, after which the supply of concessional lots would be extinguished. After this time a new technique would be required to supply land for rural lifestyle opportunities. Transfer potential could also be used in the new scheme as an equitable way of sharing new subdivision potential.
10. Development Options  
The owner of a development potential has a number of options to choose from to realise the capital value of the TDP. They include:
  - sell the potential to a purchaser in a receiving area

- purchase land in a receiving area and transfer and develop the potential on the newly acquired land
- enter into a joint development with an owner of land in a receiving area.

Figure 4 – The potential donor



## 4. A hypothetical case study to support the case for transferable development potential

### 4.1 The scenario

#### 4.1.1 Ownership

- a single farming enterprise consisting of 4 holdings (Figure 5)
- the farm is held in family ownership consisting of 2 parents and two children
- each holding is in different ownership
- some ownership overlap as shown below

Lot	Ownership
1	A
2	BC
3	AB
4	ABC

#### 4.1.2 Development potential

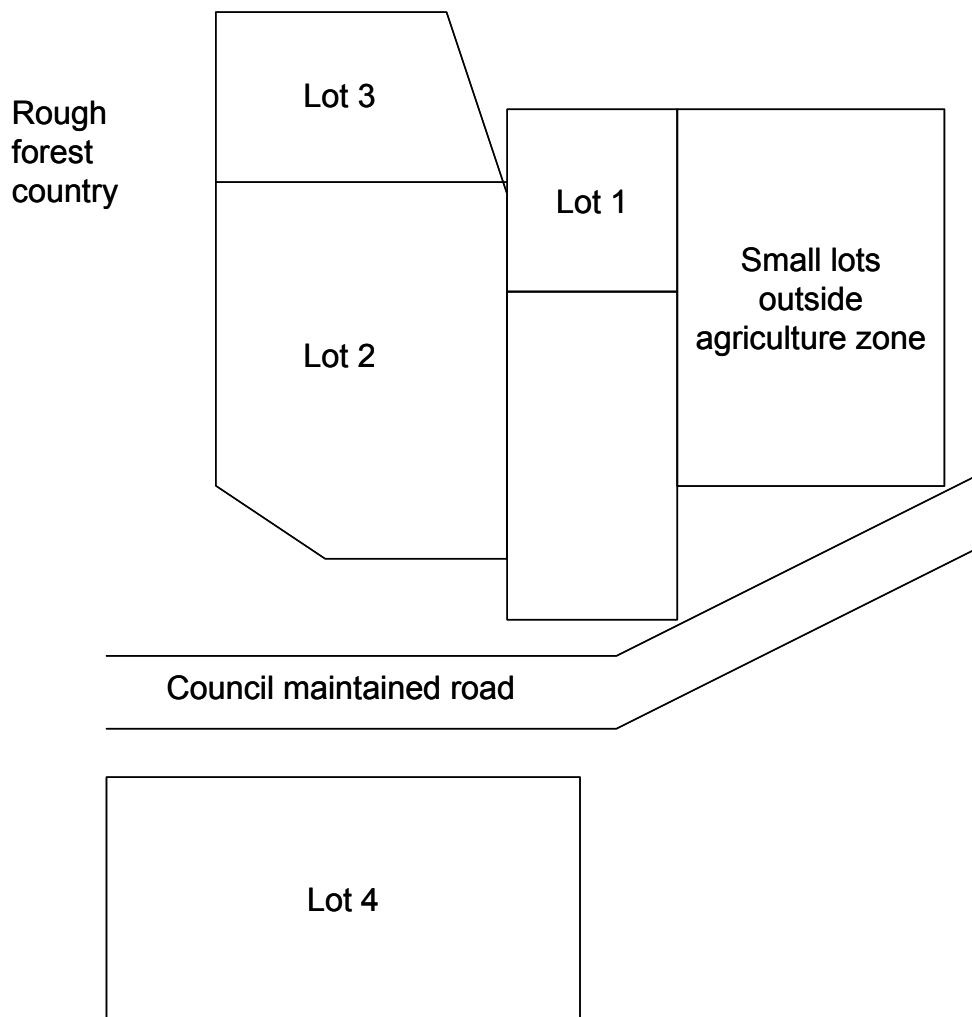
The following hypothetical development potential are attached to lots:

Lot	Hypothetical lot size (ha)	Hypothetical concessional lot potential	Additional lot yield using 120ha min lot size provision
1	100	4	
2	120	5	
3	250	6	2
4	160	5	

#### 4.1.3 Assumptions

- land is in the proposed Agriculture Zone (Ref: Bega Valley Shire Council Rural Lands Review Draft Strategic Directions paper, May 2005; Ch 1.5)
- concessional lots developable in lots 1 & 3
- concessional lots developable in lot 4 but would require significant expense to create access
- prohibitive environmental and cost constraints to development of lot 2 concessional lots
- lots 1, 2 and 3 adjoin each other. Lot 4 is about 3 km away (Fig 5).

Figure 5 – Schematic of hypothetical property layout



#### 4.1.4 Farm enterprise objectives

- retain existing land as a working farm
- acquire more land to expand farm enterprise
- release the capital value in the concessional lots to enable the achievement of objectives identified by whole of farm planning
- retain individual holdings in separate ownership so that lots 1 - 4 could in future be sold individually. The rationale behind this objective is the belief that it may be more difficult to sell a 630ha property than four smaller ones
- successful estate / succession planning. It is likely that the estate will have to find capital to buy out the one non-working sibling to enable the other to continue running the farm. The sibling planning to continue farming is also an owner of some land included in the farming enterprise
- increase water storage capacity and purchase additional water licences.

## 4.2 Land use planning options

### 1. Develop Concessional Lots as per LEP 2002.

Outcome:

- concessional lots developed within each existing holding in 2-10 ha lot sizes
- 15 lots developed
- some good quality agricultural land excised from non-agricultural uses
- some fragmentation of agricultural land likely
- potential future land use conflicts from irrigation pump noise (run at night), early morning traffic in adjacent paddocks, cow manure nearby as paddocks may be used for feeding silage.

### 2. Transfer development potential within farm enterprise.

This would require an amendment of LEP 2002 to enable transfer of concessional lot potential within the enterprise and ownerships.

Outcome:

- all 20 concessional lot potential could be developed on a single lot owned by the farming enterprise
- loss of agricultural land
- impact on agriculture could be minimised, but still possible that some impact could occur due to the number of concessional lots to be developed and proximity to agricultural activity.

### 3. Farm enterprise sells TDPs to a developer outside the Agriculture zone or purchases land outside agricultural zone and transfers TDPs to be developed.

Outcome:

- 20 concessional lot potential transferred
- no fragmentation of farm enterprise land
- development activity unlikely to impact on farming activity of donor land
- increased land use option available to farming enterprise.

### 4. The farm enterprise could also transfer the potential to subdivide lot 3 (250ha) into two 120+ha lots under current LEP provisions.

### 4.3 Hypothetical financial considerations

(This information is not to be reproduced or used in any way except as approximate estimations)

	Estimate 1	Estimate 2
Average value of one developed lot (Bega, Cobargo, Wolumla)	\$175,000	\$145,000
Less GST -1/11 <sup>th</sup>	\$15,909	\$13,181
	\$159,091	\$131,819
Less selling costs 4%	\$7,000	\$5,800
<b>NET REALISATION</b>	<b>\$152,091</b>	<b>\$126,019</b>
Less profit and risk	(30%) \$116,993	(25%) \$100,815
Less estimated development costs \$35,000 per lot	\$35,000	\$35,000
Less acquisition costs and legals (allow 4%)	\$2,800	\$2,000
	\$79,193	\$63,815
Interest for 1 year t 8% on land and development costs	\$6,559	\$4,032
Deduced land value at	\$72,634	\$59,783
<b>SAY</b>	<b>\$70,000</b>	<b>\$60,000</b>

Note that the figures of \$60,000 and \$70,000 for deduced land value represent the base land value **and** potential combined. In other words, based on these calculations, the developer would need to acquire a land/ development potential package for around the \$60,000- \$70,000 range to make the development financially viable.

The amount that a developer in a receiving area is likely to offer for a TDP will be based on many factors, including:

- whether the receiving land is already owned or has to be purchased
- the value placed on the receiving land without any attached potential
- market appeal and/or demand for small lots in the receiving area
- lot yields in the receiving area
- total and per lot development costs
- the amount of profit / risk required by the developer.