

## 7. DA No. 2008.0310: Proposed two lot subdivision – Lot 3 Section 11 DP 758860, Bermaguer Street, Quaama

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Group Manager, Planning Development and Environmental Services

<b>Applicant</b>	Lucas Casaceli
<b>Owner</b>	As above
<b>Site</b>	Lot 3 Section 11 DP 758860 – Bermaguer Street, Quaama
<b>Zone</b>	2(v) Village Zone
<b>Site area</b>	2,023.4m <sup>2</sup>
<b>Proposed development</b>	Two lot subdivision

### PRECIS

The application seeks approval for the subdivision of the subject land to create two lots of 1,011.7m<sup>2</sup> each.

The land is unsewered and pursuant to Clause 26 of Bega Valley Local Environmental Plan 2002(BVLEP 2002) each lot is required to have a minimum area 2,000m<sup>2</sup>.

10 The application is recommended for refusal.

### DESCRIPTION OF THE PROPOSAL

The proposal is for a two lot subdivision. The proposed area of each lot is 1,011.7m<sup>2</sup>.

### DESCRIPTION OF THE SITE

The site is 2,023.4m<sup>2</sup> and contains an existing dwelling. The lot has a north easterly aspect with a slope which falls away from the street boundary.

The site is surrounded by extensive farmland to the north, a vacant lot to the east, residential dwelling to the south on the opposite side of Bermaguer Street and a residential dwelling to the west.

### PLANNING ASSESSMENT

20 The proposal has been assessed in accordance with the Matters for Consideration under Section 79C of the Environmental Planning and Assessment Act 1979. Staff highlight the key issues of the proposal in this report for Council's consideration.

## Zoning

The land is zoned 2(v) Village under BVLEP 2002 with subdivision of land permitted with Council consent.

### Clause 26 BVLEP 2002 Subdivision in Urban Zones.

Clause 26 regulates the minimum lot sizes in urban zones and states;

- 30           (1) Consent must not be granted to subdivision of land within Zone 2  
(a), 2 (b), 2 (c), 2 (e) or 2 (v) to create an allotment which, in  
the opinion of the consent authority, is intended to be used  
for the purpose of a dwelling house unless the allotment will  
have a minimum area (excluding any access handle or right of  
way) of:  
(a) 550m<sup>2</sup> if a sewered lot, or  
(b) 2,000m<sup>2</sup> if an unsewered lot.
- 40           (2) However, consent may be granted for such an unsewered lot  
only where it can be shown by a site study that the proposed  
allotment will be reasonably capable of disposing of on-site  
sewage effluent without nuisance or any likely pollution of surface  
or subsurface water.

In assessing the application staff were of the opinion that subclause (1) required a minimum lot size for unsewered land of 2,000m<sup>2</sup> and that subclause (2) required the proposed lot (being greater than 2,000m<sup>2</sup>) to be justified by an on-site sewage report.

50 Council sought legal opinion on the interpretation of the Clause as the applicant holds a different opinion believing that an unsewered lot of less than 2,000m<sup>2</sup> is permitted if justified by an on-site sewerage report. The legal opinion supports the interpretation of staff. The opinion is subject to legal privilege and will be circulated to Councillors separately.

Therefore the proposed subdivision does not meet the minimum area required under the Clause and is prohibited.

## CONCLUSION

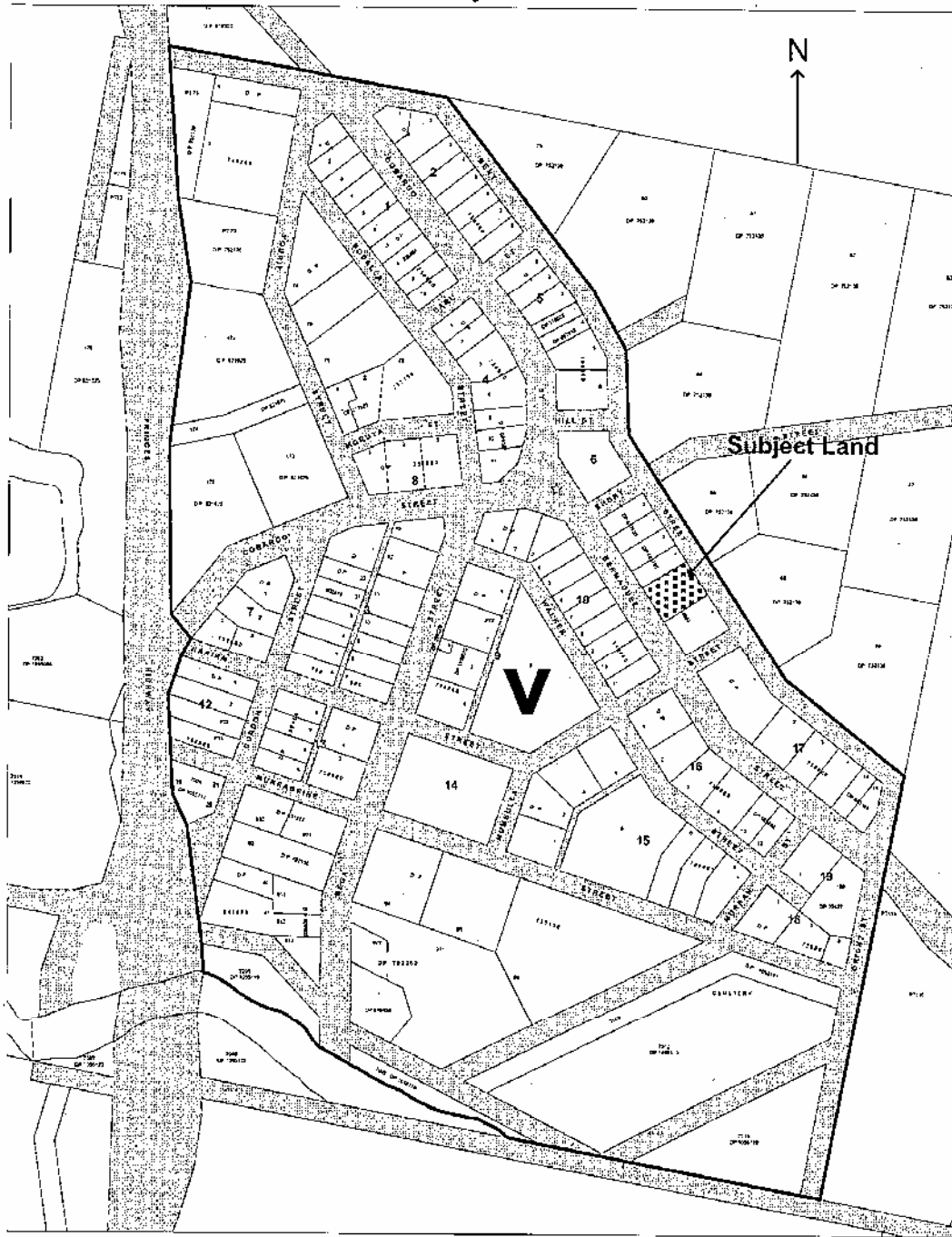
The applicant was advised that Council could not recommend approval based on the above and was offered the opportunity to withdraw the application. However, the applicant requested that the application be reported to Council for determination.

60 This proposal does not meet the minimum area requirement for an unsewered lot pursuant to Clause 26 of BVLEP 2002 and is recommended for refusal.

## RECOMMENDATION

1. That Development Application No. 2008.0310 being for the subdivision of Lot 3 Section 11 DP 758860 Bermaguet Street, Quaama to create two lots be refused for the following reason:-
  - The proposed subdivision does not meet the minimum lot size of 2,000m<sup>2</sup> pursuant to Clause 26 of Bega Valley Local Environmental Plan 2002.

Locality Plan



Lot 3 Section 11 DP 758860 - Bernagoo Street Quama