

## New Rural Living Lots Created as a Result of “Transferable Dwelling Entitlements”

### Date of Council Resolution

These guidelines were adopted by Council on 14 December 2005, and take effect on 23 January 2006, in accordance with section 2.3(2) of the Planning Scheme.

### Purpose of the Guidelines

This document is intended to assist with the implementation of the Planning Scheme by providing guidelines for the creation of new rural living lots as a result of “Transferable Dwelling Entitlements”.

This Implementation Guideline particularly relates to the Rural C (Rural Living Zone) of the Planning Scheme, wherein Council encourages the transfer/concentration of ‘dwelling entitlements’ from primary production/conservation/constrained lands to the designated rural living areas.

Council’s Implementation Guidelines are intended to apply a standard approach to the interpretation and implementation of relevant aspects of the Planning Scheme. They offer a degree of certainty and formality to applicants, Council and the community. Where an applicant is proposing a variation to the guidelines the onus is on the applicant to demonstrate the facts and circumstances to support the variation.

### Guidelines

#### 1. When does the “Transferable Dwelling Entitlement” Concept Apply?

The “Transferable Dwelling Entitlement” concept applies in the Rural C (Rural Living) Zone. The zone is intended to encourage the transfer/concentration of ‘dwelling entitlements’ from vacant primary production areas, rural conservation zoned land, rural (special land management) zoned land and other constrained rural lands into existing, fragmented, rural living areas. This discourages further fragmentation of rural lands and promotes the consolidation of primary production, conservation and constrained lands.

#### 2. How does the “Transferable Dwelling Entitlement” Concept Work?

The concept involves the amalgamation or consolidation of vacant rural lands in exchange for the creation (via subdivision) of a similar number of lots within the defined Rural C (Rural Living) Zone in a manner that ensures no net increase in the overall number of rural lots. Lots from which existing dwelling entitlements are taken are to be amalgamated or consolidated (e.g. ‘stapled’) to other existing lots, in order to remove pressure for future dwelling entitlements.

New lots in the Rural C (Rural Living) Zone are to range from 4ha to 6ha to 10ha in size, depending on the predominant subdivision pattern in the local area (see Reconfiguring a Lot Code, Part 12, Appendix I for further details on appropriate lot sizes), and are not to be located in areas wholly affected by development constraints overlays.

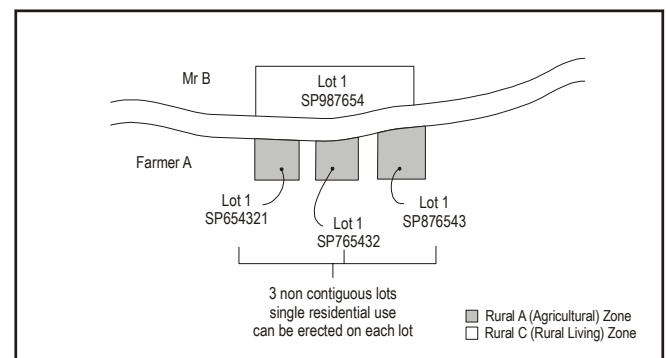
The transfer of a dwelling entitlement can occur via a boundary alteration in the same locality or via a boundary alteration in a different locality (refer to the example Scenario 2 below). The lots from which the dwelling entitlements are to be transferred can be contiguous (i.e. have common boundaries) or non-contiguous.

### 3. Example Scenarios

#### SCENARIO 1: Boundary Alteration, Same Locality

- (1) Farmer A has a farm holding in Haigslea. The farm holding is made up of three (3) non-contiguous lots (Lot 1 on SP654321, Lot 1 on SP765432 and Lot 1 on SP876543 in the Parish of North). The lots are within the Rural A (Agricultural) Zone. All three lots are capable of having a single dwelling erected on each lot.
- (2) Across the creek, also in Haigslea (but within a different Parish), Mr B has one (1) undivided lot (Lot 1 on SP987654) within the Rural C (Rural Living) Zone.

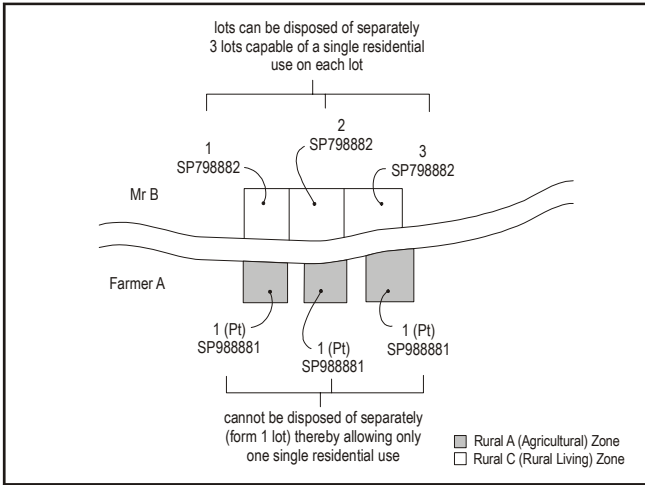
Diagram 1: Lot Configuration Before Boundary Alteration



- (3) Farmer A and Mr B come to a private arrangement concerning the purchase price of a ‘dwelling entitlement’.
- (4) Farmer A and Mr B lodge a single development application. The development application can either be as single or joint applicants although both will need to sign the consent of owner.

- (5) The development application is for a boundary alteration to reconfigure the lot boundaries to create four (4) lots. No additional lots are created.

Diagram 2: Lot Configuration After Boundary Alteration



- (6) Following Council's approval of the development application, two (2) Plans of Subdivision are lodged with Council—

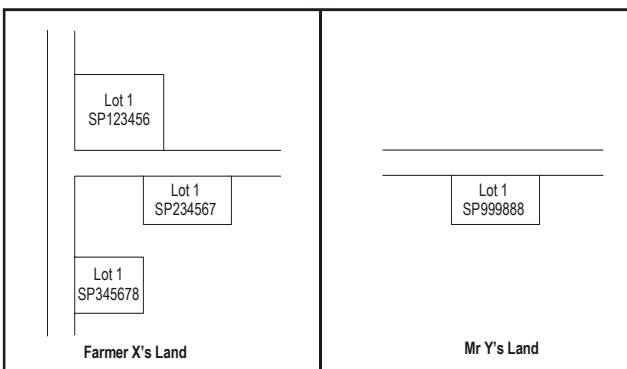
- (a) Farmer A's land being Lot 1 (Pt), Lot 1 (Pt) and Lot 1 (Pt) on SP988881. These lots together form the one lot, Lot 1 on SP988881, and cannot be disposed of separately and are only capable of having one single residential use;
- (b) Mr B's land being Lots 1-3 on SP798882. These three (3) lots are capable of having a single residential use on each lot.

- (7) The boundary alteration has effectively transferred two (2) dwelling entitlements from Farmer A's land to Mr B's land.

**SCENARIO 2 – Boundary Alteration, Different Localities**

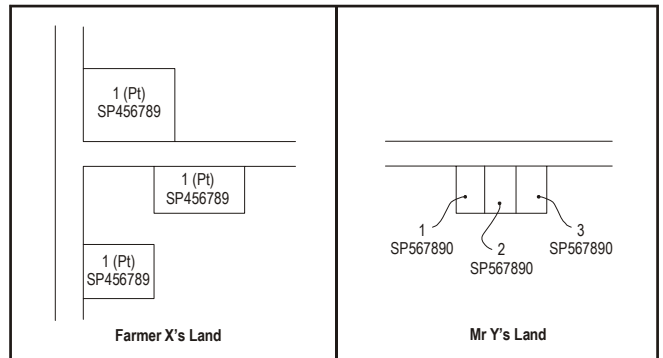
- (1) Farmer X has a farm holding in Lanefield. The farm holding is made up of three (3) non-contiguous lots (Lot 1 on SP123456, Lot 1 on SP234567 and Lot 1 on SP345678). The lots are within the Rural A (Agricultural) Zone. All three lots are capable of having a single dwelling erected on each lot.

Diagram 3: Lot Configuration Before Boundary Alteration



- (2) Mr Y has one (1) undivided lot (Lot 1 SP999888) in Pine Mountain within the Rural C (Rural Living) Zone.
- (3) Farmer X and Mr Y come to a private arrangement concerning the purchase price of a 'dwelling entitlement'.
- (4) Farmer X and Mr Y lodge a single development application. The development application can either be as single or joint applicants although both will need to sign the consent of owner.
- (5) The development application is for a boundary alteration to reconfigure the lot boundaries to create four (4) lots. No additional lots are created.

Diagram 4: Lot Configuration After Boundary Alteration



- (6) Following Council's approval of the development application, two (2) Plans of Subdivision are lodged with Council—

- (a) Farmer X's land being Lot 1 (Pt), Lot 1 (Pt) and Lot 1 (Pt) on SP456789. As these lots together form one lot, Lot 1, they cannot be disposed of separately and are only capable of having one single residential use;
- (b) Mr Y's land being Lots 1-3 on SP567890. These three (3) lots are capable of separate disposal and each lot is capable of having a single residential use.

- (7) The boundary alteration has effectively transferred two (2) dwelling entitlements from Farmer X's land to Mr Y's land.

**4. Pre-lodgement Meeting**

A pre-lodgement meeting with Council Planning Officers is recommended prior to submission of the development application.



## 5. Supporting Reports/Plans

Supporting reports/plans are to be submitted that demonstrate that an equivalent number of rural lots have been amalgamated or consolidated in accordance with the specific outcomes and probable solutions for the creation of new rural living lots as set out in Section 10.18 (6) and (7) of the Planning Scheme and detailed below—

### (6) Specific Outcomes

*New rural living lots are created only if the Local Government is satisfied there is no nett increase in the number of lots within the Rural Locality.*

### (7) Probable Solution – for sub-section (6)

*The applicant provides evidence to the Local Government before approval of the Plan of Subdivision that an equivalent number of rural lots have been amalgamated or consolidated.”*

## 6. Owner Consent

A single development application is lodged. The development application can either be as single or joint applicants. Both owners of the properties involved in the application will need to sign the “consent of owner”.

## 7. Matters for Consideration in the Processing of a Development Application and Plan of Subdivision

- The purchase price for a dwelling entitlement and associated contract of sale negotiations between applicants/owners is a private arrangement in which Council has no involvement.
- Where ‘dwelling entitlements’ are transferred, new lots may be created without—
  - (i) payment of infrastructure contributions (e.g. parks and road contributions);
  - (ii) sealed road access; or
  - (iii) reticulated water supply.

- The creation of new lots within the Rural C (Rural Living) Zone without the transfer of a dwelling entitlement is—
  - (i) inconsistent and undesirable; and
  - (ii) not exempt from payment of infrastructure contributions, nor provision of sealed road access.
- Solicitor’s undertakings should be required as a condition of the development approval, to accompany the Plans of Subdivision to ensure that both Plans of Subdivision are lodged and registered in the Titles Office.

## 8. Notation on Council’s Property System

A notation should be placed on Council’s property system, regarding any ‘consolidated lots’ (which remain in separate parts) stating that the lots were consolidated as part of a boundary realignment application creating rural living lots elsewhere in the City and that any previous ‘dwelling entitlements’ have effectively been ‘transferred’. To this end, an advice should be included in the approval directing the Development Manager to include a memo on the Pathway System noting the before mentioned details. This information is also to be conveyed to intending purchasers by way of Planning and Development Certificates.

