NSW DEPARTMENT OF
PRIMARY INDUSTRIES

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The General Manager
Forbes Shire Council
PO Box 333
FORBES NSW 2871

Attention: Michael Eagles

Dear Michael

Forbes Shire Growth Management Strategy – Prepared by Edge Land Planning Consultants

Please find a response from the Department of Primary Industries regarding above strategy in your letter dated 19 March 2007. As outlined in the meeting held on 3 April 2007, my Department has no major issues with the strategy in dealing with the outcomes of the protection of agricultural land. However although not explicitly recognised all agricultural lands also have value for other primary industries, notably for mineral exploration and forestry purposes, and the potential threat of unjustified settlement is the major issue that threatens the future use of such lands. Suggestions in relation to the strategies outlined in relation to aquatic habitat, and water quality also address fishery concerns.

My Department notes and supports the Council in the strategic work undertaken, and particularly the efforts made by Michael Eagles, Planner at Council with his efforts in helping determine the economic analysis of representative farms and associated enterprises in the area, and this to form the basis to the protection of agricultural lands. It is noted that current lot and holding patterns and land use has been examined in the study. The shire has had a high historic level of fragmentation and clearly holding sizes are not reflective of sustainable agricultural businesses in the area. Again the economic analysis undertaken is generally representative of what holdings that undertake commercial agricultural business without further analysis that accounts for long term return on assets and equity.

In relation to the urban expansion areas to the north of the town, it should be noted that the effect of the rural residential 1(c) zone immediately north of Forbes around Calarie will have negative consequences for mineral exploration in that area. The Alcheringa Estate located in an area west of an area of mineral interest has also suffered this fate. In light of the mineral potential interest in the area, the Department recommends that any urban candidate area or other areas that may

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have any proposed zoning changes in the western section of the Shire be consulted in relation to the impacts on mineral potential.

It should also be noted that the main issue of relevance to the planning process is the protection of the land resource base for agriculture and other primary industry uses both for present and future needs. Strategically this is a key point that will also provide the setting for the allocation of land to other landuse zones, recognising the contribution and future potential for primary industries in the area.

In relation to aquatic habitat issues, there is no consideration to the key fish habitats and protection of riparian vegetation strategically particularly as the Lachlan River is a major water feature in the area. The subdivision of lands in this area is also a concern to fish habitat.

Luke Pearce, Fisheries Conservation Manager at Tumut is available for matters relating to aquatic habitat protection and threatened species on phone (02) 6947 4188 or 0428 227464,(luke.pearce@dpi.nsw.gov.au). Mary Kovac, Resource Management Officer (Agriculture) is available for further information on the agricultural section on phone 68811270. Warwick Bratby, Planning Manager for State Forests NSW is available on phone (02) 6884. If you have any queries regarding mineral issues, please contact Dr Phillip Blevin of the DPI Maitland Office (Mineral Resources Division), or via phone (02 4931 6585) or email (phil.blevin@dpi.nsw.gov.au).

Yours faithfully

Greg Markwick
Regional Director of Agriculture and Fisheries
Central West
NSW Department of Primary Industries
19 May 2007

Department of Primary Industries - Comment on the Forbes Draft Growth Management Strategy

Attachment A Fisheries.

The Department supplies the following recommendations in relation to the strategies:

Water Catchments
Ecological Management and Biodiversity. The comments made will assist in furthering the strategies associated with aquatic habitat protection and water quality, and dealing with these at the LEP level.

General

The Department would consider that aquatic habitats (e.g. creeks, rivers, streams, lakes, lagoons, billabongs, estuaries, bays, inlets etc) are regarded as assets to the local community. Not only do they contribute to the cultural and environmental well being of regions, they also contribute to the regional economy through industry (e.g. fishing, aquaculture) and fishing tourism. Their conservation helps ensure the region's economy is sustained into the future.

Aquatic habitats are often subject to development pressure for water access, recreational use, residential, agricultural and industrial development. However, very few are recognised and incorporated into statutory documents such as LEPs to ensure that consistent environmental assessment and development controls apply in these areas.

LEPs play a major role in managing new and expanded developments. Developments can affect aquatic habitats:

- **Directly** and/or
- **Indirectly** and
- During the **construction** phase and/or
- During the **operational** phase.

Indirect impacts upon aquatic habitats caused by water quality decline (e.g. from soil exposure and stormwater discharge from upstream developments) are of equal or greater threat as direct impacts due to the footprint of the development impinging upon aquatic habitats.

Zoning restrictions can largely eliminate **direct** impacts, but other mechanisms (such as conditions placed upon development consents to prepare, implement and audit Water Quality Management Plans) will be required to deal with **indirect** impacts.

The Department recommends the inclusion of provisions that contribute to the conservation of aquatic ecosystems by addressing **both** these pathways (direct/indirect) and phases (construction/operation).

The planning approach outlined below is based on the concept of zoning expansive waterbodies (bays, lakes, estuaries etc) as well as identifying all significant waterbodies including rivers and creeks as "sensitive environments" with an overlay or hatching over the top of the underlying zone including those that may already be zoned "Waterway".

Waterway zones will determine the types of developments that are permitted/not permitted within waterways whereas the purpose of the sensitive waterway overlay is not to specify which developments are permitted/not permitted, but to highlight the fact that there is some additional sensitivity associated with the environment in that area and higher performance standards in relation to water quality and aquatic habitats are required for developments which are permitted.

Protection and Management of Key Fish Habitats

1. DPI is currently preparing maps of "key fish habitats" to assist Councils with the preparation of their LEPs, and will assist in dealing with policy direction of implementing protection zones and other measures to protect significant biodiversity areas. The aim of the maps is to highlight those habitats that are of most importance for protection and conservation to sustain fish populations. To arrange access to Key Fish Habitat maps for the Forbes LGA please contact Luke Pearce.
2. Linear "key fish habitats" such as rivers and creeks may not be zoned "Waterway" as such (although large river channels such as Lachlan could be) but should be included within an "Environmentally Sensitive Waterway" (ESW) overlay (i.e. hatching) applied over the top of the underlying zone.
    a. The ESW overlay should also be applied over the top of waterbodies that have been zoned "Waterway". The purpose of the ESW Overlay is not to specify which developments are permitted/not permitted, but to highlight the fact that there is some additional sensitivity associated with the area and higher performance standards in relation to water quality and aquatic habitats are required for developments which are permitted without consent or permitted with consent.
    b. The ESW overlay should be mapped and defined as extending beyond the high water mark for at least 40 metres to encompass the riparian zone. This is to acknowledge the existing provisions of the *Rivers and Foreshores Improvement Act* as well as the listing of "degradation of riparian vegetation" as a Key Threatening Process under the provisions of the *Fisheries Management Act*.
3. DPI recommends that the objectives of the ESW Overlay should include:

- Ensure that development maintains and enhances bank stability, fish passage, instream habitat (including snags, gravel beds and aquatic vegetation), riparian vegetation, water quality, ecosystem health and biodiversity within or adjacent to key fish habitats.

4. DPI recommends that the plan include performance criteria and standards to be applied by the consent authority when assessing applications for development in or adjacent to Environmentally Sensitive Waterway (ESW) areas. These performance criteria and standards would relate to:

   a. Bank stability

   b. Water quality (sediment, salinity, nutrients, acid sulfate, gross pollutants etc)

   c. riparian vegetation

   d. instream habitat including snags (large woody debris), gravel beds and aquatic macrophytes

   e. longitudinal and lateral connectivity (i.e. fish passage). An appropriate performance criteria/standard for this is the Department's "Why do fish need to cross the road? Fish Passage Requirements for waterway Crossings" (publication available at http://www.fisheries.nsw.gov.au/__data/assets/pdf_file/5054/booklet-fish-passage.pdf

   f. introduction or spread of aquatic pests and weeds

   g. listed threatened species, populations or communities or the exacerbation of key threatening processes listed under the *Fisheries Management Act 1994*, the *Environmental Protection and Biodiversity Conservation Act 1999* or their habitat

   h. public access to fisheries resources.

6. To help avoid inadvertent breaches of legislation, and facilitate the Integrated Development provisions of the EP&A Act, the LEP should also include two "notes" (i.e. non legal clauses) to remind Council staff, developers and their advisors, that works within streams and waterbodies may require a permit or concurrence from the NSW DPI **even though the works may or may not require development consent from Council** and/or require more detailed environmental assessment. DPI recommends that such notes be included on the map that shows the "Environmentally Sensitive Waterway" overlay as well as the relevant section of the written document.

   Suggested wording for such notes is:
   Note: (1) Excavation of material from the bed or banks of a waterbody, (2) depositing any sand, soil, rock, rubble or other material on the bed of a waterbody, (3) constructing a structure (weir, dam, causeway etc) within a waterbody such that the free passage of fish may be obstructed, or (4) harming any marine or estuarine plants including seagrass, seaweed and mangroves, may require a permit from the Department of Primary Industries in accordance with the provisions of the Fisheries Management Act 1994. Please check with the Department.
   Note:- (2) "Decline of Riparian Vegetation", "Removal of large woody debris (snags)" and "Installation of instream structures that modify flow regimes" are listed as Key Threatening Processes under the provisions of the Fisheries

Management Act 1994. Careful consideration of the appropriateness of a development proposal that will contribute to a loss or decline in riparian vegetation, involve the removal of snags or involve the installation of an instream structure is required. If the area is habitat for a threatened species, population or community of fish, then a "significant impact" is likely to be the conclusion of the 7 part test and a Species Impact Statement will be required.

Environmentally Sensitive Areas

1. Due to the sensitive nature and connectivity of aquatic habitats it is recommended that all key fish habitats and adjacent riparian buffers or setbacks (i.e. all that land identified as "Environmentally Sensitive Waterway") regardless of whether it has been developed and regardless of its zoning should be identified as "environmentally sensitive areas" (as per Clause 18 of LEP template). This will ensure that no exempt or complying development is allowed to occur in these areas and that there is adequate environmental assessment of potential impacts of development on these habitats.

Fish Passage

1. Fish need to move within waterways and overland to wetlands and floodplains during flood events in order to breed, recruit to new areas and to access habitat for different life cycle stages. LEPs should ensure that **lateral** and **longitudinal** connectivity within and between aquatic habitats is maintained to sustain aquatic biodiversity and ecosystem function.
2. **Lateral** connectivity refers to maintaining the links between in-stream habitats and adjacent floodplain and wetland habitats during flooding events. Barriers such as flood levees, roads across floodplains and block banks can restrict the ability of fish to move between these habitat areas. Floodplains and wetlands are also important spawning habitats for several native fish species during flood conditions.
3. **Longitudinal** connectivity refers to the movement of fish upstream and downstream and between freshwater and saltwater areas. Barriers such as poorly designed road crossings, weirs, dams, floodgates and other man-made structures can limit the ability for fish to move within and between habitats to access food, shelter to breed and to avoid/escape poor habitat conditions. Connectivity is also important to maintain natural flow conditions and to improve water quality.
4. DPI is willing to assist Council with the mapping of "fish migration routes" that are important for the movement and migration of native fish. DPI recommends that this be included as an overlay in the LEP and performance standards in relation to maintaining the opportunities for fish passage should be placed upon developments within this "zone". Such performance standards should explicitly apply to developments that may obstruct the free passage of fish such as dams, weirs, causeways, floodgates and culverts.
6. Waterway structures including weirs, dams, causeways, road crossings, floodgates etc should not be included in the "Exempt Development" or "Complying Development" Schedules or "Development without Consent"

Categories for any waterway zoning or any zoning that includes significant waterways. All such structures should require development consent.

Protection of Aquatic Vegetation

1. Riparian and in-stream aquatic vegetation are important components of healthy fish habitats. They play a key role in regulating water quality (e.g. water temperature, nutrient absorption, trapping silt from entering waterways etc.) and provide sources of food and shelter for a range of aquatic fauna, including native fish.
2. DPI recommends that Clause 32 of the LEP Template - Preservation of Trees or Vegetation be included and the Development Control Plan (DCP) which prescribes the "species or kinds of trees or other vegetation" that the Clause applies to, should specifically include emergent and submerged aquatic vegetation in freshwater, estuarine & marine waterways and riparian vegetation (other than recognised weeds).

Land Subdivision and Basic Landholder Rights

1. Subdivision of land fronting freshwater waterways creates additional Basic Landholder Rights under the provisions of the *Water Management Act*. This contributes to greater water extraction from streams. The LEP should avoid establishing zones where subdivision is permissible over land that includes major waterways, in particular those delineated as "key fish habitats". If that is not possible, the subdivision layout should avoid creating a multitude of lots with stream frontage.

The proposed Rural Small Holdings Designation at River Road is such a development that has the potential to increase basic landholder rights to access water. It also poses risks to the riparian vegetation in this area. NSW DPI is opposed to this type of development within the riparian corridor.

Attachment B Agriculture

Page 103
5.5.1 Growth Management
2. Prepare a hierarchy of settlements
The intent of this strategy is sound in providing a coordinated and logical process for dealing with settlement. It should be noted that the opportunities for farm housing should be primarily to support agricultural enterprise development and any related activities e.g. farm tourism.

Page 105
5.5.2
2 Include in each land use designation a set of desirable future character statements which will provide the basis for the objectives of each zone:

Primary Production
. Preservation of high class agricultural resources

It should be noted that “high class” agricultural resources should include resources currently developed for agriculture – in some cases land that may be regarded as less than high class can still be used for agriculture under good management regimes that result in production outcomes.
Something about sf

3. Identify minimum lot sizes that will enable the continuation of the use of the land for agriculture.

This strategy will also satisfy the objectives of protecting lands for other purposes - 3.2 Permit agriculture on smaller lots as long as it is in conjunction with an agricultural use and that the use must be commended before a dwelling house can be constructed on the property.
This policy action should address both irrigated and intensive agricultural pursuits when a legal and adequate water supply is also required, in addition to the minimum areas to attract a dwelling entitlement of 100 and 40 hectares respectively. In the Jemalong Irrigation area, any proposed subdivision for irrigated agriculture must also address the impacts of such an action on the current land and water management plan of the area, to avoid the effects on the environmental issues that form part of the plan, and associated off farm effects of salinity and water tables of the area. This may be addressed in any Development Control Plan that will deal with such activities specific to this area.

Attachment C: Minerals

While this strategy document uses a variety of inputs, such as hazards and agricultural capability, to assess land use planning, base geology and mineral resource potential is ignored. Yet base geology exerts a fundamental control on topography, soil types and vegetation patterns, as well as the location of known and potential mineralisation.

There is no mention of mining in the strategy. Although no mines are currently active within the Shire, potential exists for Ordovician age porphyry copper and gold deposits in the western part of the Shire, and possible fault related gold mineralisation in the zone from Forbes to Parkes (e.g. the established resource at Calarie).

Section 1.1.
Known and potential mineral and extractive resources should be considered in the list of “matters” that help inform future land development decisions.

Section 2.2
Key Issues. Note that it is not just mineral exploration that is affected, but mine development as well. Important areas of the state are getting perilously close to the “too hard” basket in terms of exploration and mine development due to haphazard fragmentation of rural lands.

Long term sustainable development (and maintenance) of housing, roads and other infrastructure will also require access to construction materials and sites for quarrying. Development strategies should include provisions to ensure that adequate construction materials are available and accessible.