

Planning and Assessment

IRF20/5221

Gateway determination report

LGA	Dubbo Regional Council (DRC)
PPA	Dubbo Regional Council
NAME	Rezone part of Lot 69 DP 259061 and part of Lot 1 DP 197736 from E3 Environmental Management to IN2 Light Industrial. Add "Light Industry (Movable Building Manufacturing)" as an additional permitted use on part Lot 31 DP 1263665, part Lot 1 DP 197736 and part Lot 69 DP 259061 under Schedule 1 of the Dubbo LEP 2011.
NUMBER	PP_2020_DREGI_003_00
LEP TO BE AMENDED	Dubbo Local Environmental Plan 2011
ADDRESS	63 Fitzroy Street and 2R Gilgandra Road, Dubbo
DESCRIPTION	Part of Lot 69 DP 259061, part of Lot 1 DP 197736 and part of Lot 31 DP 1263665.
RECEIVED	09 November 2020
FILE NO.	IRF20/5221
POLITICAL DONATIONS	There are no known donations or gifts to disclose and a political donation disclosure is not required.
LOBBYIST CODE OF CONDUCT	There have been no known meetings or communications with registered lobbyists with respect to this proposal.

1. INTRODUCTION

1.1 Description of planning proposal

The planning proposal seeks to amend the Dubbo Local Environmental Plan (LEP) 2011 as follows:

- Rezone part of Lot 69 DP 259061 and part of Lot 1 DP 197736 from E3 Environmental Management to IN2 Light Industrial.
- Amend Schedule 1 to permit a Light Industry (Moveable Building Manufacturing) with development consent, as an Additional permitted use on part of Lot 31 DP 1263665, part of Lot 1 DP 197736 and part of Lot 69 DP 259061.

1.2 Site description

The subject land comprises of part of Lot 31 DP 1263665, part of Lot 1 DP 197736 and part of Lot 69 DP 259061 located at 2R Gilgandra Road and 63 Fitzroy Street, Dubbo (see Figure 1). The three properties have an approximate area of 22 ha. The land is

predominantly cleared of vegetation and a large portion is used for light industrial purposes (moveable home manufacturing).

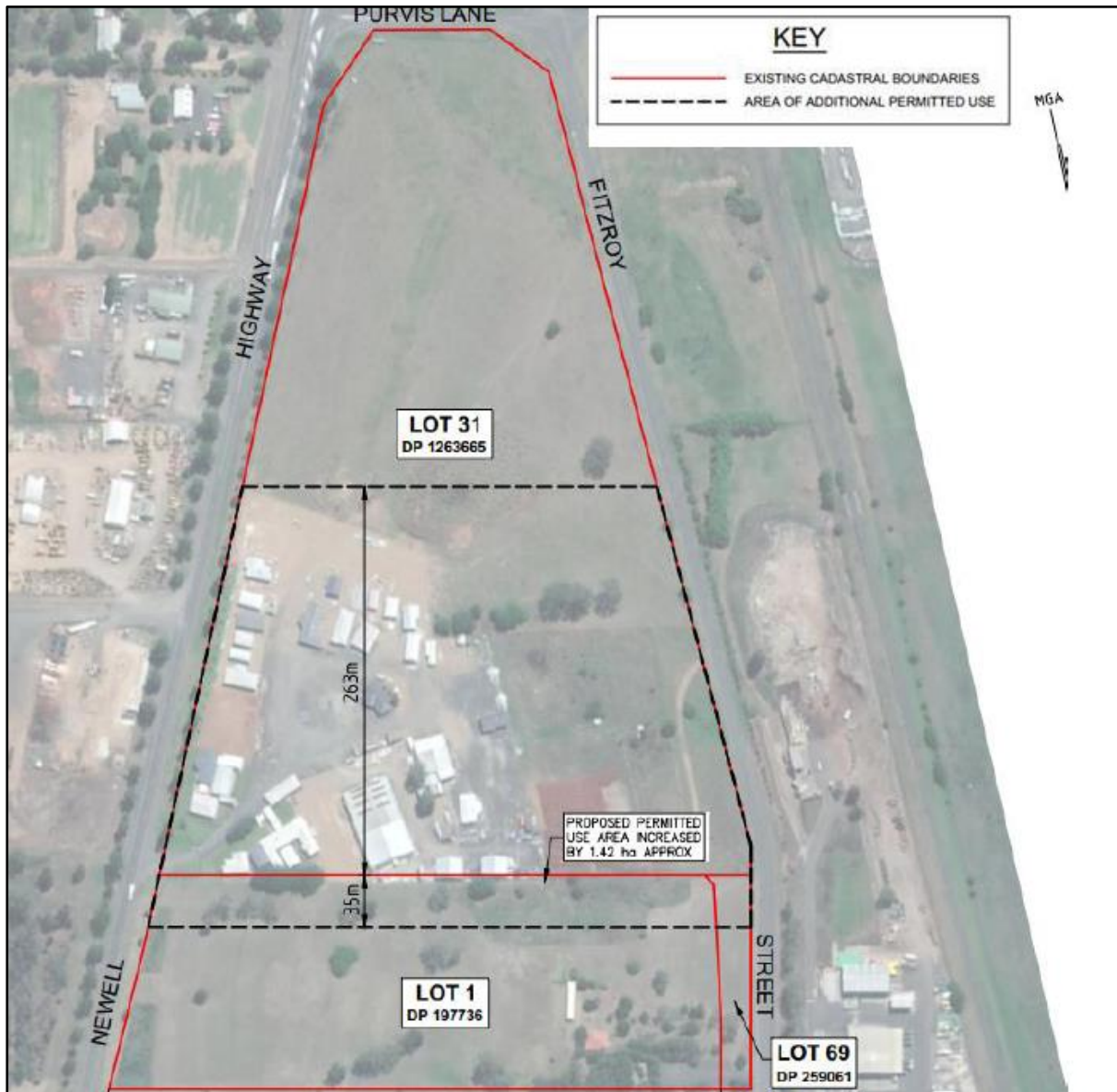


Figure 1: Subject land map

Source: Barnson Planning Proposal Report, 2020

1.3 Existing planning controls

Lot 31 DP 1263665 (2R Gilgandra Road) is zoned E3 Environmental Management, and Lot 1 DP 197736 and Lot 69 DP 259061 (63 Fitzroy Street) are partly zoned E3 Environmental Management and partly IN2 Light Industrial, under the Dubbo Local Environmental Plan (DLEP) 2011.

The minimum lot size of E3 Environmental Management and IN2 Light Industrial zoned parts of the subject land are 100 ha and 2,000 m² respectively. It is noted that the planning proposal does not propose to change the current MLS.

The subject land is also identified as a Flood Planning Area and Groundwater Vulnerable in the DLEP 2011.

The DLEP 2011 maps that affect the subject land are presented in Figures 2-5.

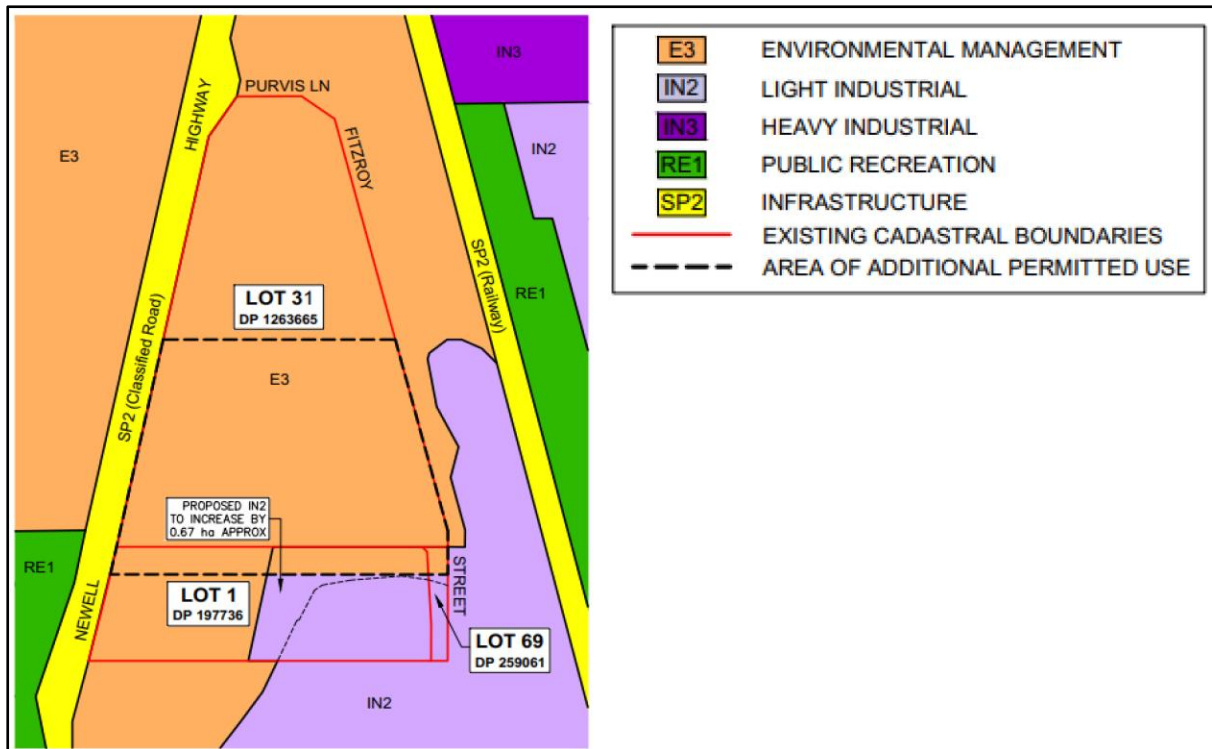


Figure 2: Existing zoning
Source: Barnson Planning Proposal Report, 2020

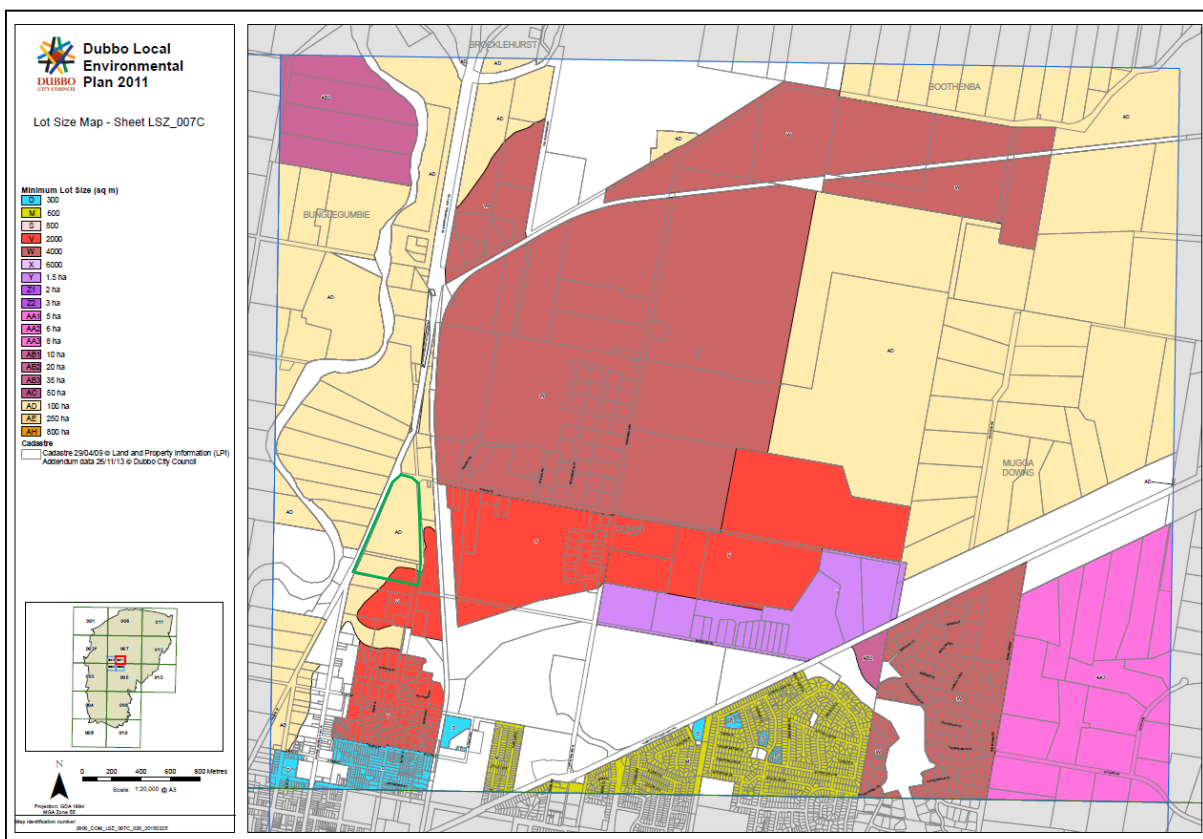


Figure 3: Minimum lot size
Source: DLEP 2011

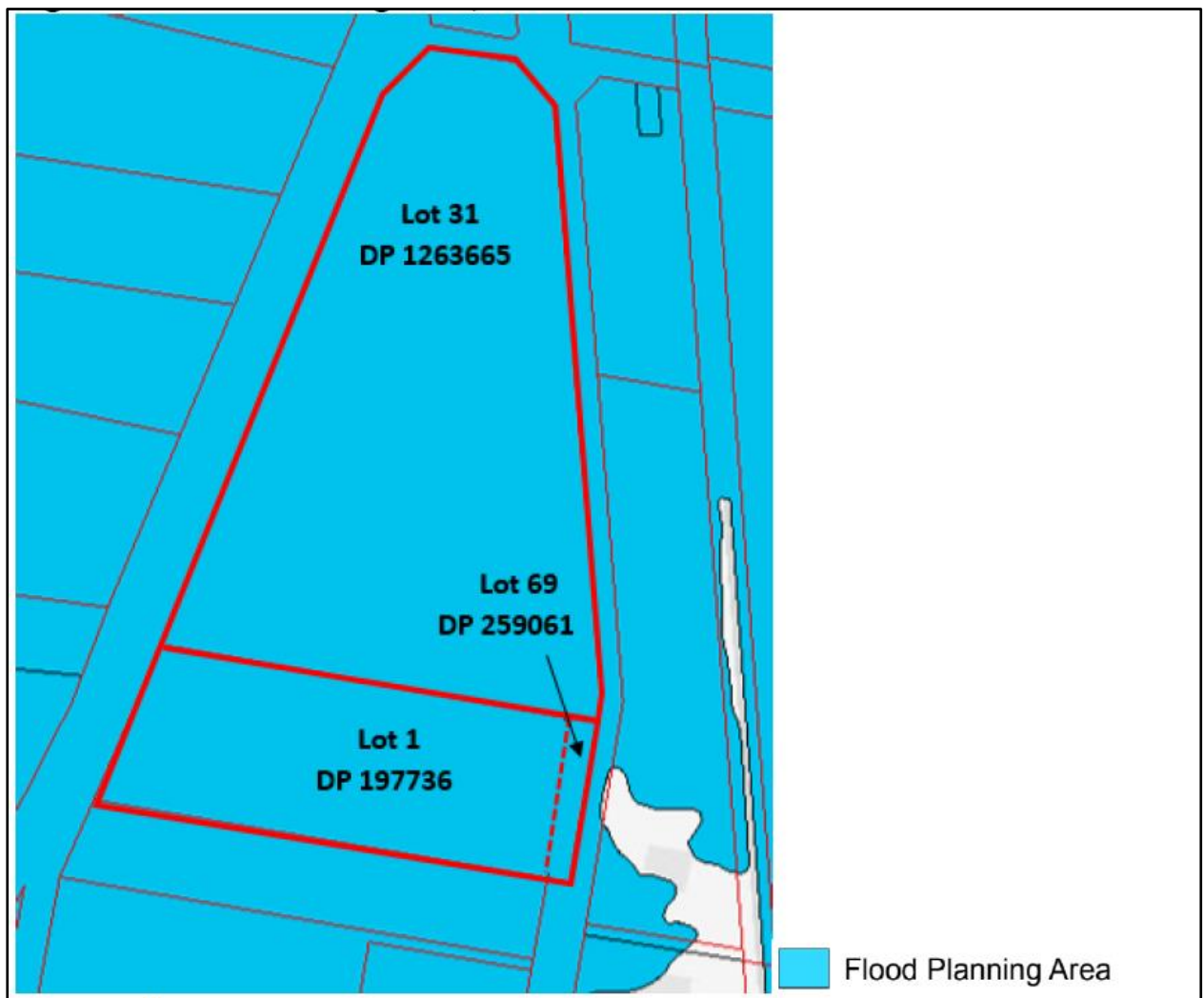


Figure 4: Flood planning area

Source: Dubbo Regional Council Planning Proposal Report, 2020

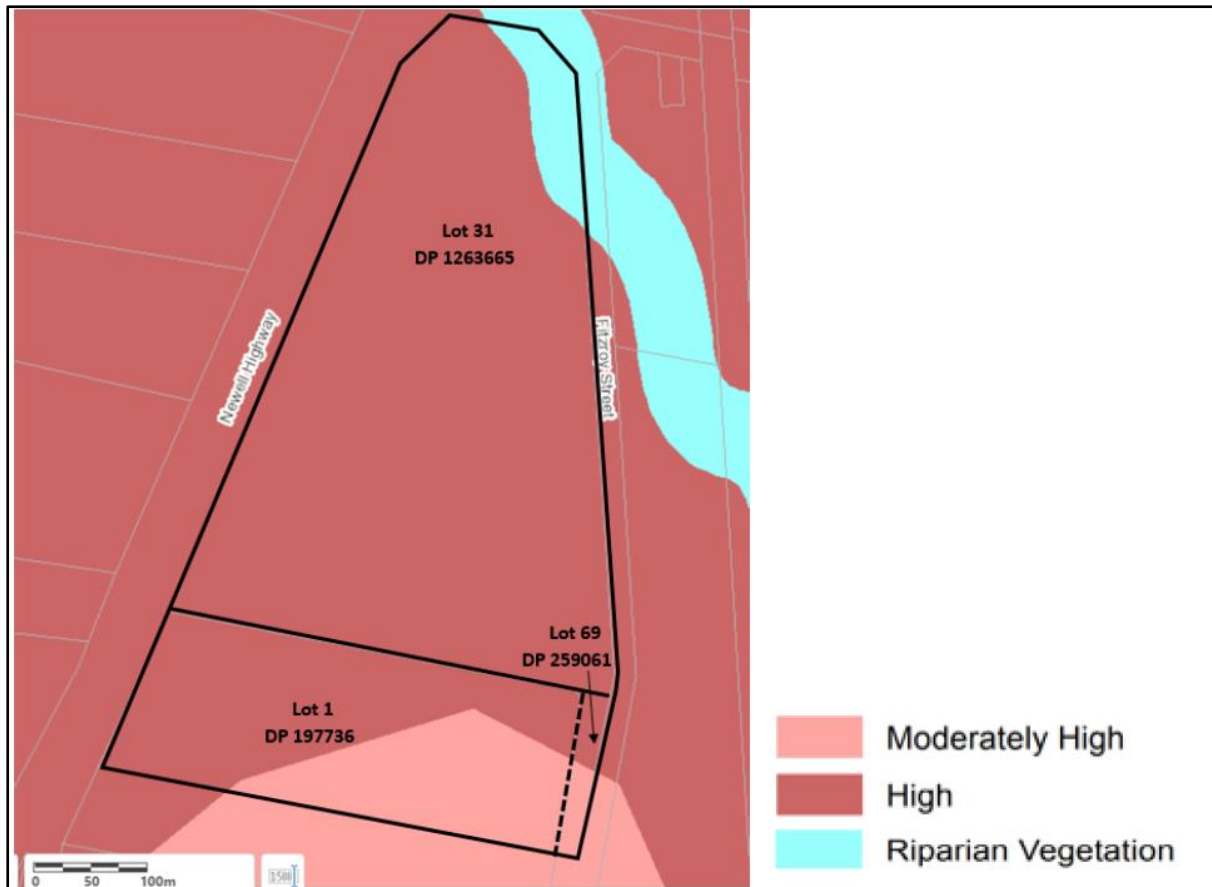


Figure 5 Groundwater vulnerability

Source: Dubbo Regional Council Planning Proposal Report, 2020

1.4 Surrounding area

The subject land is situated 125 m east of the Macquarie River, forming part of the river's floodplain (see Figure 6). The land is bound by IN2 Light Industrial zoned land to the south-east, E3 Environmental Management zoned land to the north and south and the Newell Highway (SP2 Infrastructure) to the west. It is surrounded by mixed use development with industrial and light industrial land uses being the dominant development type. Most of the surrounding development can be described as low density, which is compatible with the floodplain.

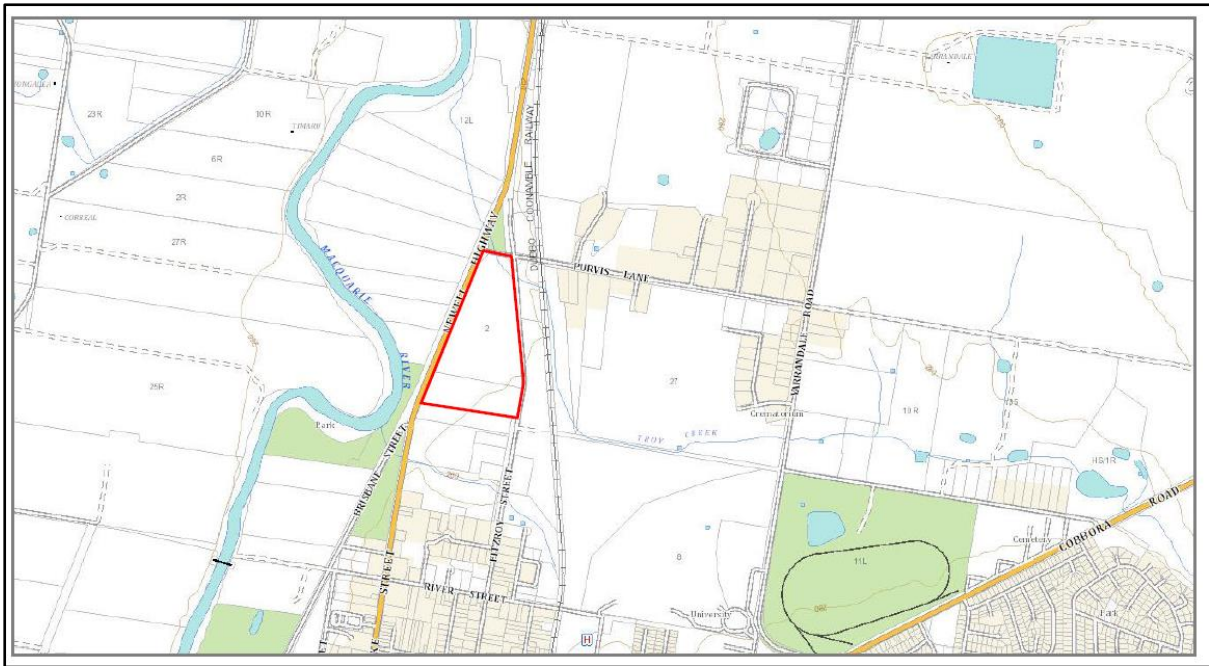


Figure 6: Subject land surrounding area – Source: Barnson Planning Proposal Report, 2020

1.5 Summary of recommendation

Proceed with condition –The planning proposal will facilitate growth of the existing business without significantly increasing the environmental risks on the subject land.

2. PROPOSAL

2.1 Objectives or intended outcomes

The intended outcome of the planning proposal is to provide for the future expansion and long-term security of the existing moveable building manufacturing business, while limiting the intensity and extent of development on the subject land. The intended outcome will better reflect the existing and future light industrial use of the subject land without severely impacting the flood hazard and environmental constraints on the subject land and/or adjoining area.

2.2 Explanation of provisions

The explanation of the provisions is clearly outlined on Page 5 of the planning proposal as follows:

- rezone part of Lot 1 DP 197736 and part of Lot 69 DP 259061 from E3 Environmental Management to IN2 Light Industrial; and
- add Light Industry (Moveable Building Manufacturing) as an additional permitted use on part of Lot 31 DP 1263665, part of Lot 1 DP 197736 and part of Lot 69 DP 259061 in Schedule 1 of Dubbo LEP 2011.

2.3 Mapping

The planning proposal includes mapping showing the proposed changes to LEP map sheets LZN_007C and APU_007C (see Figures 7 & 8). The maps are considered adequate for community consultation.

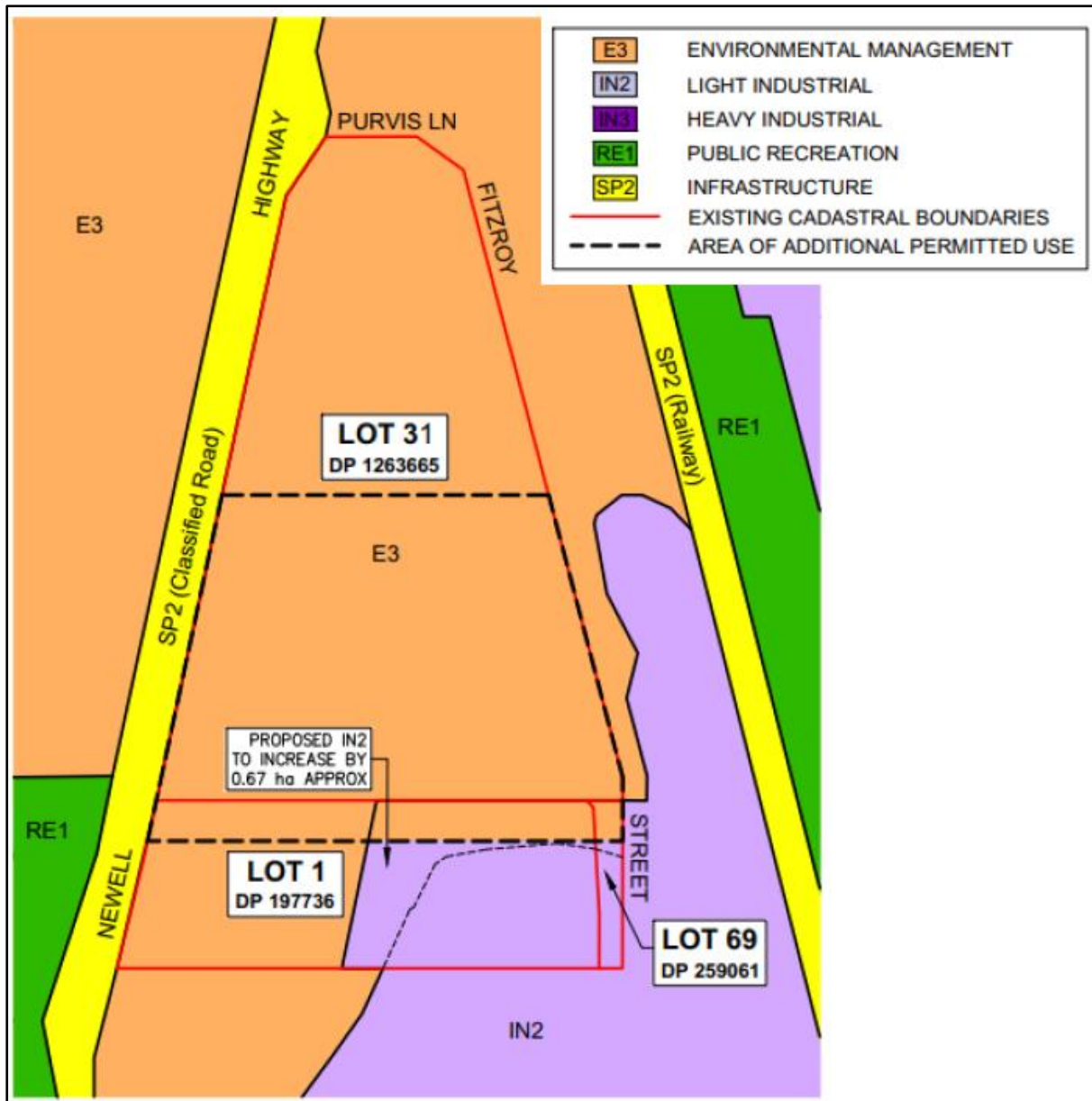


Figure 7: Proposed rezoning
Source: Barnson Planning Proposal Report, 2020

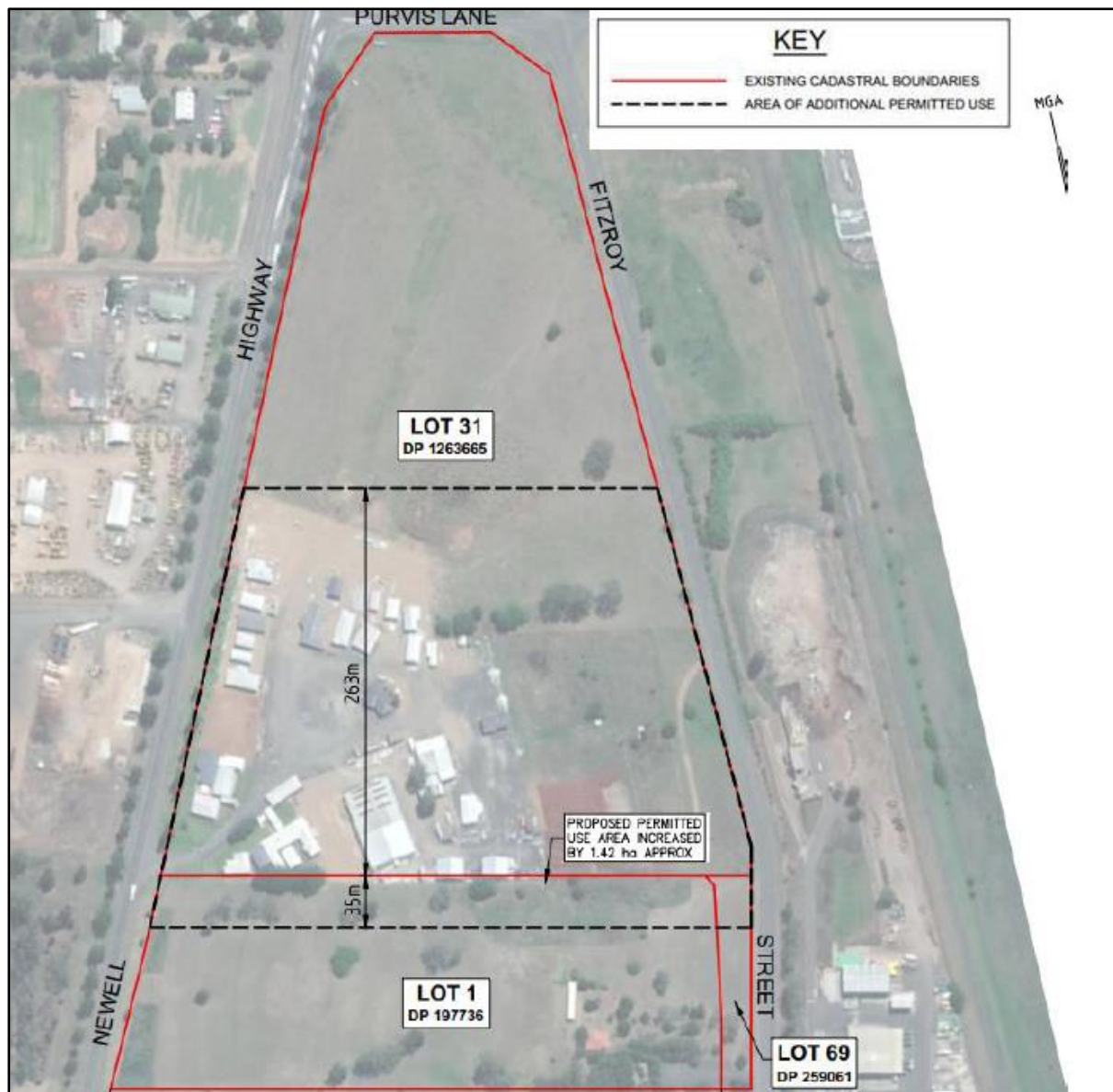


Figure 8: Proposed additional permitted use
Source: Barnson Planning Proposal Report, 2020

3. NEED FOR THE PLANNING PROPOSAL

The planning proposal seeks to facilitate the permissibility and expansion of the existing moveable building manufacturing business, on the subject land. While the business can continue to operate under the existing use provisions of the *Environment Planning and Assessment Act 1979*, due to approval under a previous LEP, the current zoning of the land as E3 Environmental Management prohibits this land use. These conflicting provisions restrict potential future expansion of the business. The rezoning and additional permitted use proposed by the planning proposal will provide certainty for future operation and expansion of the existing business, which is compatible to adjoining light industrial uses and less detrimental to the floodplain environment. It is agreed that the planning proposal is the best means for achieving the intended outcomes.

4. STRATEGIC ASSESSMENT

4.1 State

There is no known state strategic planning framework relevant to this proposal.

4.2 Regional / District

The Central West and Orana Regional Plan 2036 is relevant to the planning proposal. Part 3, page 6 of the planning proposal provides assessment against Direction 10 and Actions 10.1 and 12.4 of the Regional Plan. Direction 10 and Action 10.1 relate to promoting business and industrial activities in employment lands and Action 12.4 relates to amending planning controls to deliver greater certainty of land use.

The planning proposal assessment and justification are considered appropriate, however additional commentary on some matters is provided below.

The planning proposal was not assessed against Directions 13 and 15 relating to protection and management of environmental assets and resilience to natural hazards to which the planning proposal is potentially inconsistent. However, based on flooding analysis and extent of proposed development provided in the planning proposal, the proposal is unlikely to have any adverse flood and environmental impacts. Therefore, the planning proposal can be considered to have only a minor inconsistency with these Directions.

4.3 Local

Part 3, pages 7-9 of the planning proposal provides assessment against the goals, visions, principles, priorities and actions of relevant local strategic planning frameworks. These include the Dubbo Employment Lands Strategy (formerly, Dubbo Industrial Areas Development Strategy), the Dubbo Regional Local Strategic Planning Statement and the Dubbo Region Community Strategic Plan 2040. The assessment adequately demonstrates that the proposal is consistent with the local strategic planning framework.

4.4 Section 9.1 Ministerial Directions

The planning proposal has provided an assessment of the proposal against the Section 9.1 Ministerial Directions (see pages 9-14 and Attachment B of the planning proposal).

The planning proposal is consistent with the following applicable Section 9.1 Ministerial Directions:

- 1.1 Business and Industrial Zones
- 2.3 Heritage Conservation
- 3.4 Integrating Land Use and Transport
- 5.10 Regional Plans
- 6.1 Approval and Referral Requirements
- 6.2 Reserving land for public purpose

The planning proposal is inconsistent with the following applicable Section 9.1 Ministerial Directions:

1.5 Rural Lands

The planning proposal is inconsistent with this Direction as it intends to rezone and increase the permissibility of light industrial development on E3 Environmental

Management zoned land. This inconsistency is justified as the subject land is identified as being partly within the North Dubbo Industrial Precinct in the Dubbo Employment Lands Strategy, endorsed by the Department of Planning, Industry and Environment (DPIE).

2.1 Environment Protection Zones

This Direction is relevant to the planning proposal as it seeks to rezone and increase the use of environmentally sensitive land. The subject land is zoned E3 Environmental Management and mapped as groundwater vulnerable under the Dubbo LEP 2011. It is noted that the subject land is largely cleared of all vegetation and has been used for moveable home manufacturing for over 40 years. The proposal retains the local environmental protection standards that apply to land zone E3 Environmental Management, most of the subject land. The potential impact of the proposal on the environmental values of the subject land is likely to be minor. The inconsistency is considered minor in nature, and any potential environmental impact can be adequately assessed and managed as part of future development applications on the land.

4.3 Flood Prone Land

The subject land is mapped within the flood planning area under the Dubbo LEP 2011. This Direction states that a planning proposal must not rezone land within the flood planning area from an Environmental Protection zone to an Industrial zone or permit a significant increase in the development of that land.

It is noted that while the planning proposal seeks to increase development on the subject land, it does not propose any changes to existing flood planning provisions applicable to the land. A Flooding Analysis submitted with the planning proposal concluded that earthworks to facilitate future development proposed by the planning proposal will not result in significant flood impacts. Moreover, Council's pre-gateway consultation with the DPIE-Biodiversity and Conservation Division (BCD) confirmed that the planning proposal is consistent with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005 as well as the Guideline on Development Controls on Low Flood Risk Areas. Therefore, the inconsistency is justified in accordance with the terms of the direction.

6.3 Site Specific Provisions

This Direction applies to the planning proposal as it seeks to include an Additional Permitted Use (APU) on the subject land in Schedule 1 of the Dubbo LEP 2011. The APU limits future development on the subject land to the specific existing use that is compatible with the environmental constraints on the subject land and consistent with the objectives of zone E3 Environmental Management. As such, the inconsistency is of minor significance.

The planning proposal assessed alternative pathways including rezoning the subject land to zone IN2 Light Industrial and adding 'light industry' as permitted with consent in the land use table of the E3 Environmental Zone. It concluded that these options are inappropriate due to the flood prone and environmental sensitive nature of the subject land. This conclusion is supported as the alternatives would have resulted in permitting a broad range of (incompatible) light industrial land uses on the subject land and/or similar lands.

In addition, the flooding analysis submitted with planning proposal only assessed the footprint of the development proposed by the planning proposal which means flood impacts from additional developments/intensification are unknown.

4.5 State environmental planning policies (SEPPs)

The planning proposal has undertaken assessment of the proposal against the State Environmental Planning Policies (see Page 9 and Attachment A of the planning proposal). The assessment does not identify any inconsistencies with any of the applicable SEPPs. The outcome of the assessment is considered appropriate.

5. SITE-SPECIFIC ASSESSMENT

5.1 Social

The proposal is not expected to result in any social cost to the community. Given the type of existing business on the subject land, it is anticipated that the proposal will support the supply of affordable housing in the Dubbo local government area (LGA) and the wider Central West and Orana region.

5.2 Environmental

The proposal is not expected to adversely affect any threatened species, populations or ecological communities or their habitat as the subject land is already significantly disturbed through previous and existing uses. The proposal retains the LEP environmental protection standards that apply to most of the subject land.

Based on the flooding analysis and extent of proposed development provided in the planning proposal, it is considered that potential flood, biodiversity and groundwater impacts can be adequately considered and managed at the development application stage.

5.3 Economic

The proposal is anticipated to generate positive economic impacts by facilitating expansion of the existing business and providing employment opportunities. The business currently employs 34 staff and 15 contractors, and this could grow following future expansion of the business. Therefore, the proposal is considered positive for the local economic growth of the Dubbo LGA.

5.4 Infrastructure

The subject land fronts the Newell Highway, a classified road. The planning proposal does not propose new access points from the highway. The proposal states that new access would be from Fitzroy Street, which is a local road.

6. CONSULTATION

6.1 Community

Council's proposed community consultation period of 28 days is considered appropriate.

6.2 Agencies

Council has undertaken pre-gateway consultation with DPIE- BCD in relation to the flood impacts of the proposal. DPIE- BCD, in a letter dated 11 September 2020, advised that the planning proposal is consistent with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005 as well as the Guideline on Development Controls on Low Flood Risk Areas.

Council has not proposed consultation with any other agencies. It is considered that formal consultation should be undertaken with DPIE-BCD during the public exhibition

period to provide the agency an opportunity to fully review the planning proposal and associated documents, as well as this Gateway Determination.

7. TIME FRAME

Council's proposed timeframe for completing the amendment is 6 months. It is considered appropriate to provide 9 months to complete the amendment to allow adequate time for legal drafting, which is not included in the timeline on page 19 of the planning proposal.

8. LOCAL PLAN-MAKING AUTHORITY

Council has requested to be the local plan-making authority. This is supported as Council has no interests in the land.

9. CONCLUSION

Preparation of the planning proposal is supported to proceed with conditions because:

- The proposal would allow for the growth and sustainability of the existing business.
- It is unlikely to cause adverse social, economic or environmental impacts.
- The proposal has strategic and site merit.
- Inconsistencies with relevant regional plan and section 9.1 Directions are justified and/or minor.

10. RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. agree that any inconsistencies with section 9.1 Direction 2.1 Environment Protection Zones and Direction 6.3 Site Specific Provisions are minor; and
2. agree that any inconsistencies with section 9.1 Direction 1.5 Rural Lands and Direction 4.3 Flood Prone Land are justified.

It is recommended that the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. Prior to undertaking community consultation, the planning proposal should be updated to clearly state the land area of the sites that are proposed for rezoning and the additional permitted use.
2. Public exhibition is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:
 - (a) the planning proposal must be made publicly available for a minimum of **28 days**; and
 - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 6.5.2 of *A guide to preparing local environmental plans* (Department of Planning and Environment, 2018).

3. Consultation is required with DPIE-Biodiversity and Conservation Division (BCD) under section 3.34(2)(d) of the Act. This agency consultation can be undertaken concurrently with the community consultation.
4. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
5. Given the nature of the planning proposal, Council is authorised as the local plan-making authority under section 3.36(2) of the Act.
6. The time frame for completing the LEP is to be **9 months** from the date of the Gateway determination.



11.12.20

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