

Planning and Assessment

IRF20/347

Gateway determination report

LGA	Forbes
PPA	Forbes Shire Council
NAME	Additional Permitted Use to permit subdivision of 23-25 Lower Wambat Street, Forbes (2 homes, 0 jobs)
NUMBER	PP_2019_FORBE_001_00
LEP TO BE AMENDED	Forbes Local Environmental Plan 2013
ADDRESS	23-25 Lower Wambat Street, Forbes
DESCRIPTION	Lot 3 and 4 DP 618865
RECEIVED	02 May 2019, additional information on 17 January 2020
FILE NO.	EF19/16546
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 an amendment to Schedule 1 - Additional Permitted Uses, to permit subdivision of 23 and 25 Lower Wambat Street, Forbes. This will permit an additional two lots and two dwellings to be erected on the land and result in each of the four lots being approximately 2ha. There will no additional lots with frontage to the Lachlan River.

1.2 Subject site and surrounding area description

The subject site is located approximately 3.5km south of the Forbes CBD (**Figure 1**) and is still within the urban locality of Forbes. The subject site span approximately 8.8ha and has frontage to the Lachlan River. The southern portion of the lot has steep terrain, varying from 234m to 236m Average Height Datum (AHD) and is subject to high hazard flooding given the proximity to the Lachlan River. The northern portion of the lot has a higher elevation (approximately 237m AHD) and has been identified as being located within a low hazard flood risk area.

The subject site already contains two dwellings on the ridge of the highest elevation before the lot descends to the Lachlan River. The northern portion of the lots appear to be previously used for small scale cropping. However, the planning proposal states the lots were previously grazed and are used purely for residential / lifestyle purposes.

South Forbes is predominately a R5 Large Lot Residential area. Being on the southern periphery of Forbes and with most of the area being flood prone, these large lot residential areas have an average lot size between 2ha and 10 ha, depending on flood risk. South Forbes is used for a mixture of rural residential living

with some small scale farming. There is still potential for significant infill of south Forbes given the number of undeveloped lots visible from aerial imagery.

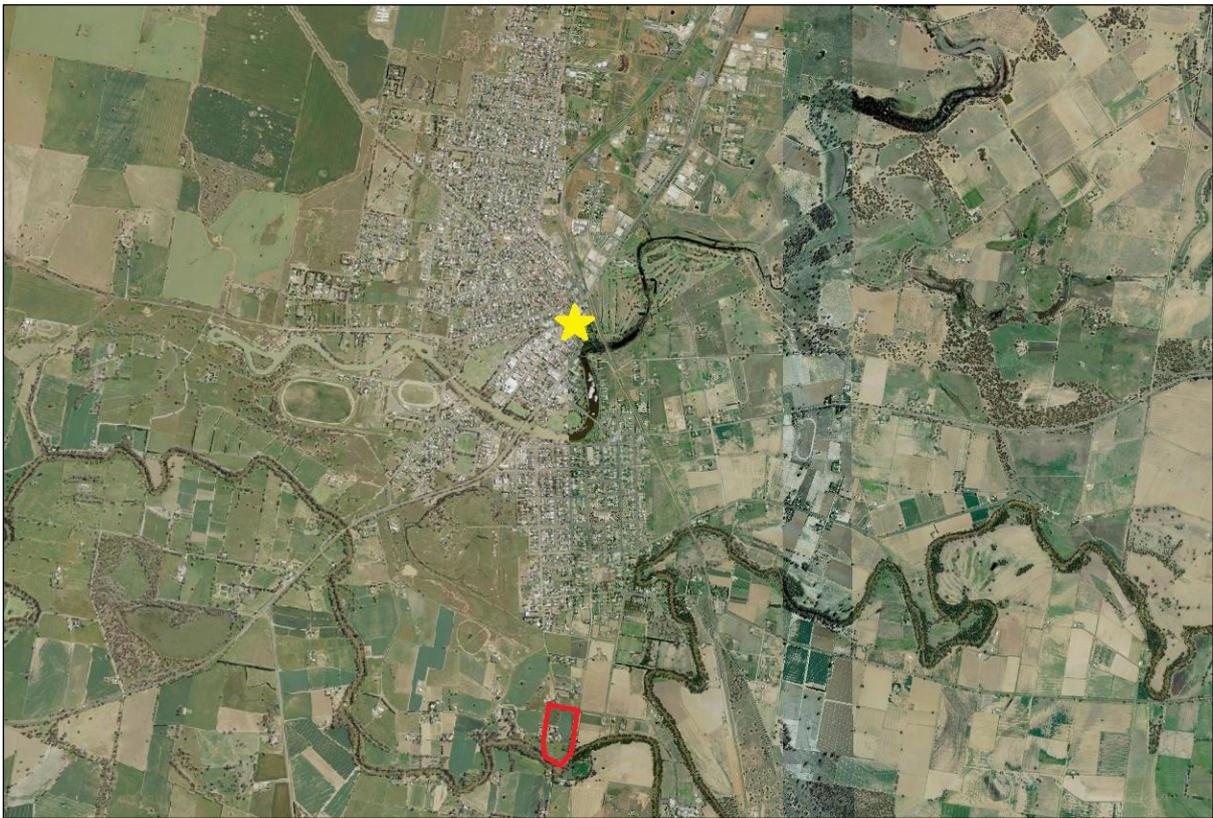


Figure 1: Proximity of the subject site (red) to Forbes CBD (yellow star).

1.3 Existing planning controls

Each lot of the subject site contains a split zone (**Figure 2**) and Minimum Lot Size (MLS) (**Figure 3**) to reflect the transition between high and low flood hazard (**Figure 4**). The southern portion of the lot is zoned RU4 Primary Production Small Lots with a MLS of 10ha. While the northern portion of the lot is zoned R5 Large Lot Residential with a MLS of 2ha.

As the subject site is adjacent to the Lachlan River, the subject site also contains high terrestrial biodiversity value vegetation along the banks of the River. The entire subject site is also mapped as high groundwater vulnerability in the Forbes Growth Management Strategy 2009 (GMS).

The 2001 Forbes flood study shows the subject site contains high hazard floodway to south and low hazard flood storage to the north (**Figure 4**). The flood boundary matches the split zone and MLS boundary in the Forbes LEP 2013. During the 2016 floods, the flood behaviour of many areas of Central West NSW changed and an updated flood study was completed in 2018. This flood study has not been adopted by Council, however, is still relevant to understand the potential risks to the subject site. The 2018 flood study shows the high hazard floodway has retreated further south of the subject site. The northern portion of the lot is now also mapped as low hazard flood fringe, which is a reduced flood risk to the 2001 study. The only increase in flood risk is the north-western portion of Lot 4 DP 618865, which is now

mapped as high hazard flood storage, with a narrow section of high hazard flood fringe.



Figure 2: Land zoning of the subject site.

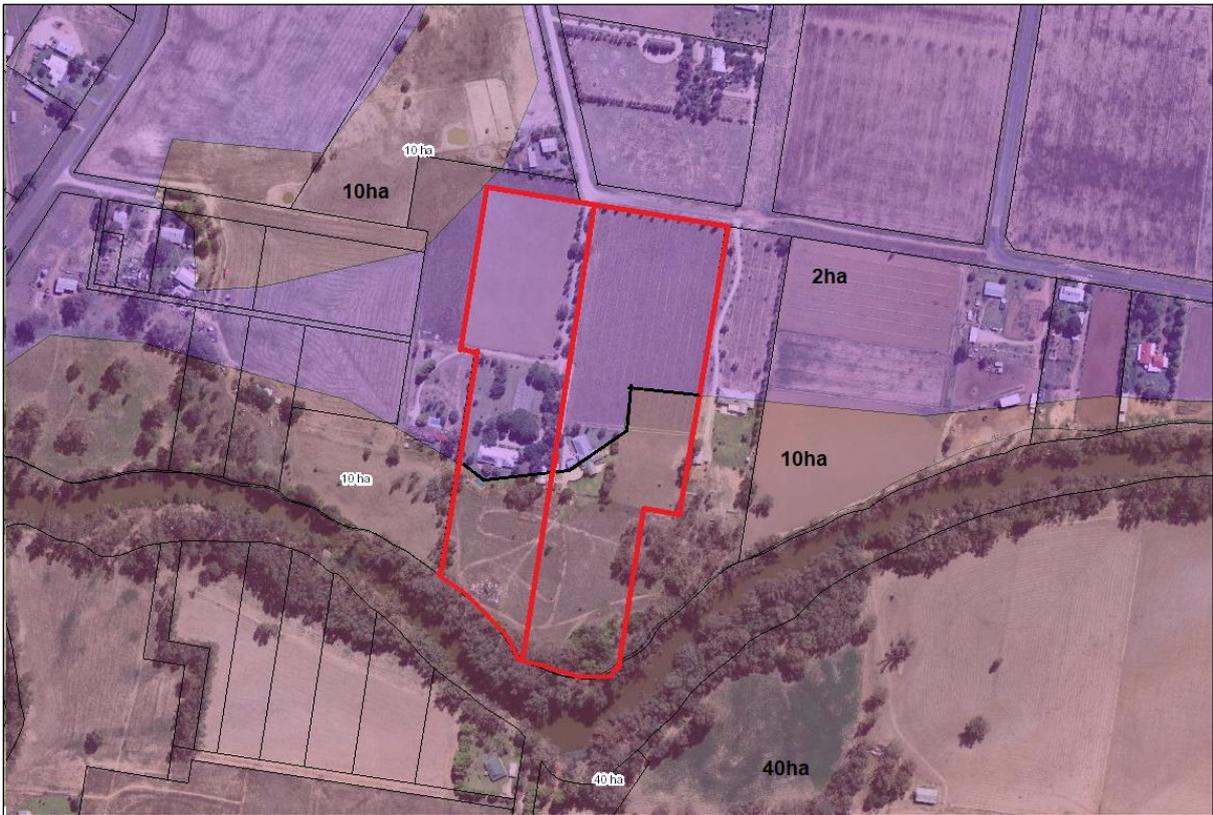


Figure 3: Minimum Lot Size provisions for the subject site.

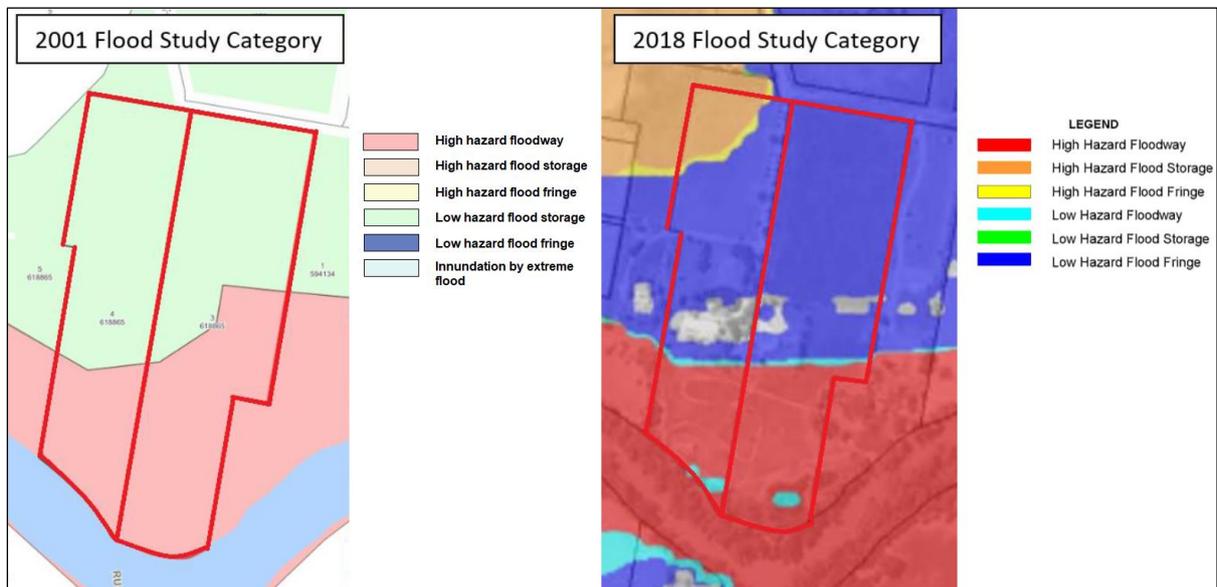


Figure 4: Comparison of adopted (2001) and most recent (2018) flood hazard mapping of the subject site.

The objectives of zone R5 Large Lot Residential are to:

- Provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.

- Ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.
- Ensure that development in the area does not unreasonably increase the demand for public services or public facilities.
- Minimise conflict between land uses within this zone and land uses within adjoining zones.

Council's intended outcome of the planning proposal is consistent with the objectives of the R5 zone as it will:

- Enable construction of residential housing in an area away from the high hazard flood storage area and avoid impact to groundwater sensitive land by being connected to reticulated water and sewage.
- Enable an existing large lot to be subdivided to its recommended MLS of 2ha and provide for proper and orderly development of urban areas.
- The proposal will extend the existing public facilities and is not considered to place an unreasonable demand on these services as the area is already catered for dwelling densities at a 2ha MLS.
- Not increase density of dwellings in the area as the MLS will not be changed.

The objectives of zone RU4 Primary Production Small Lots are to:

- Enable sustainable primary industry and other compatible land uses.
- Encourage and promote diversity and employment opportunities in relation to primary industry enterprises, particularly those that require smaller lots or that are more intensive in nature.
- Minimise conflict between land uses within this zone and land uses within adjoining zones.
- Ensure land is available for intensive plant agriculture activities.
- Encourage diversity and promote employment opportunities related to primary industry enterprises, particularly those that require smaller holdings or are more intensive in nature.

The proposal is inconsistent with the objectives of the RU4 zone as both lots have existing dwellings and under the MLS of 10ha. Further residential subdivision of this area would reduce the agricultural productivity of the land. While the subject site is not being used for agricultural purposes and the current land use better reflect the R5 zone to the north. Given the zone does not reflect the existing land use of the subject site to the north, the proposal to retain the RU4 zone to the south with two existing dwellings is considered acceptable. As explained above, the current land use and proposed subdivision meets the objectives of the R5 zone. Given the flood risk of the southern portion of the lots, rezoning it to R5 is not be a suitable alternative. In this instance, the proposal's inconsistency with the RU4 zone objectives is of minor significance as it will retain the existing two dwellings on the southern section of the land.

1.5 Summary of recommendation

Proceed with conditions – The planning proposal is consistent with local and regional strategic planning and should proceed with conditions. The subdivision layout should allow the two additional dwellings to be located outside of the high hazard flood risk area. Given the unresolved inconsistency with section 9.1 Direction 4.3 Flood Prone Land and differences between the 2001 and 2018 flood mapping, agency consultation regarding flooding is recommended before community consultation.

The proposed APU for this land is considered as an interim measure while Council reviews its broader floodplain management controls and considers options for land where there is a split MLS.

2. PROPOSAL

2.1 Objectives or intended outcomes

The objective of the proposal is to allow for the subdivision of the subject two lots into four lots, each with a dwelling permissibility. Two dwellings are located on the land. The new lots and dwelling houses will be located on the land zoned R5 and there will be no additional lots with frontage to the Lachlan River. The proposed lot layout is shown in **Figure 5**.

2.2 Explanation of provisions

The mechanism suggested to achieve the objective of the planning proposal is through a specific clause in Schedule 1, Additional Permitted Use (APU). The exact wording of the APU clause will be drafted with Parliamentary Counsel, therefore, none is proposed yet. The intent of the APU is clear enough for public consultation without amendment.

2.3 Mapping

The proposal does not suggest any amendments to LEP maps. It is required that the creation of a new APU will require the subject site to be identified on an APU map, through creation of an APU_ 005B map sheet.



Figure 5: Proposed lot boundaries of the proposal after subdivision.

3. NEED FOR THE PLANNING PROPOSAL

The planning proposal reasoning for this LEP amendment is to facilitate the practical subdivision of lots to the lesser MLS of 2ha to permit further large lot residential dwellings to be erected. As the subject land has a split MLS, subdivision cannot be approved below the higher of the two MLS of 10ha. This is because ‘dwelling houses’ are only permitted with consent if the lot meets the larger of the MLS, under clause 4.1(2) of the LEP. Currently, Forbes LEP 2013 does not have a split MLS development standard clause to provide an exemption to subdivide to the lesser of the two MLSs. Therefore, Council cannot issue development approval for this proposal and a planning proposal is required to amend the Forbes LEP 2013.

The original method to achieve this, as submitted by council on 2 May 2019, was to reduce the MLS of the RU4 portion of the lot, from 10ha to 2ha. This would result in the subject site having a MLS which is inconsistent with flood risk and MLS mapping across the rest of the LGA. Therefore, this is option was not supported and additional methods to achieve the intent of the proposal were requested by the Department.

An updated planning proposal was completed in October 2019 which suggested achieving the intent of the proposal through an amendment Schedule 1 APU of the Forbes LEP 2013. Council staff and Councillors support this planning proposal with an APU as it is consistent with the intent of the LEP to allow subdivision of the R5 land to 2ha. The planning proposal recommends located the houses outside the high hazard flood storage area and adopting DCP flood protection controls. Council is of

the opinion the subsequent development would not increase flood risks. This is the preferred option at this time.

Another method to permit subdivision which has not been discussed in the planning proposal documentation is the creation of a Part 4 Principal Development Standard to address the issue. Creation of this clause could enable all land with a split MLS to use the smaller of the two MLS standards to subdivide in certain circumstances. There is a Standard Instrument model clause available to address this. This option was discussed with Council staff; however, it would require further broader strategic investigation to determine what land this would apply to and if there would be any unintended subdivisions if such a clause was adopted. Therefore, to allow this proposal to proceed it can be supported with the APU as an interim method while Council undertakes the broader strategic investigations.

4. STRATEGIC ASSESSMENT

4.1 State

The Floodplain Development Manual 2005 (FDM) is relevant to proposals which affect land within flood prone areas. The FDM includes a policy to manage flood prone land where the objective is to provide for a merit based assessment of developments, which balances the needs for social, economic and environmental factors. The policy also encourages local councils to adopt strategic planning and local development controls for all flood prone land to mitigate existing flood risks and prevent increasing future risks. The proposal will adhere to local flood strategic planning and development controls by being in a R5 zone with most of the land being within the low hazard flood storage area and being built to Council DCP standards.

4.2 Regional / District

The Central West Orana Regional Plan 2036 (CWORP) is the relevant regional strategic planning document for this proposal. The proposal is consistent with the CWORP as outlined below:

- *Action 12.4 Amend planning controls to deliver greater certainty of land use:* There is currently ambiguity in the LEP wording for subdivision of land where there is a split MLS. The proposed APU clause would provide certainty by listing specifically which MLS applies to the subject site and is consistent with this action.
- *Action 14.2 Locate, design, construct and manage new development to minimise impacts on water catchments, including downstream areas and groundwater sources:* The proposal will be located outside of the high hazard flood areas and be connected to reticulated water and sewage which will minimise the impact on groundwater sensitive land. The proposal is consistent with this action.
- *Action 15.1 Locate developments, including new urban release areas away from areas of known high biodiversity value; areas with high risk of bushfire or flood; contaminated land; and designated waterways:* The proposal will be located outside of the high hazard flood areas, which is consistent with this action.

4.3 Local

The Department endorsed Forbes Growth Management Strategy 2009 (GMS) is relevant to the proposal. The Forbes GMS outlines the South Forbes area is suitable for rural residential purposes, including areas of low hazard flood storage in certain circumstances. The Forbes GMS also notes reducing the MLS of land affected by high hazard flooding is unacceptable. Both the 2001 and 2018 flood mapping show part of the proposed new northern lots would be subject to high hazard flooding (**Figure 4**). While the proposal will not reduce the MLS development controls of the land, it will effectively reduce the operating MLS by permitting subdivision and erection of dwellings down to 2ha. The inconsistency with the Forbes GMS is considered minor as the majority of the lot is within low hazard flooding and the dwellings can be located outside of the high hazard flood areas.

The Forbes Community Strategic Plan 2018-2028 (CSP) also applies to this proposal. Direction 4 of the Forbes CSP relates to balancing the needs of rural and urban land use. The main strategies are to preserve important agricultural land and provide diverse housing types to meet population demands. The planning proposal is consistent with the Forbes CSP as it will provide two new dwellings in an area already designated for residential purposes.

4.4 Section 9.1 Ministerial Directions

Direction 1.2 Rural Zones

This Direction applies as the proposal will permit increased residential dwelling density partially within a rural zone. The proposal is consistent with this Direction as it will not rezone rural land and will only permit increased residential density within the existing town of Forbes.

Direction 1.5 Rural Lands

This Direction applies as the proposal will affect land zoned for rural use. The proposal will not change the MLS, however, it will permit increased residential dwelling density partially within a rural zone by permitting subdivision to below the mapped MLS of 10ha. Given the surrounding land use is for R5 Large Lot Residential, the proximity to Forbes, avoidance of impact to groundwater and the Lachlan River through connection to reticulated services, and lack of agricultural production of the land, the proposal is not expected to significantly impact agricultural land. The inconsistency with this Direction is therefore, considered minor in significance and the inconsistency is justified.

Direction 2.1 Environmental Protection Zone

This Direction applies as the subject site is located on high terrestrial biodiversity value and groundwater sensitive land. The planning proposal is consistent with this Direction as it will not reduce the environmental protection standards applying to the environmental protection land.

Direction 3.1 Residential Zones

This Direction applies as the planning proposal affects land within a R5 Large Lot Residential zone. The planning proposal will enable the subject site to be developed to its full density potential of 2ha and erection of two additional dwellings connected

to reticulated services can be constructed. The planning proposal is consistent with the objectives of this Direction.

Direction 4.3 Flood Prone Land

This Direction applies as the planning proposal affects flood prone land. Direction 4.3 provides a planning proposal must consider the Floodplain Development Manual (FDM) 2005 and not permit development that will result in significant increase to evacuation requirements or flood impacts to neighbouring properties. The inconsistency can be justified if the proposal is in accordance with a study prepared under the FDM 2005 or is of minor significance. As the 2001 Forbes Flood Study was prepared before the FDM 2005, any inconsistencies cannot be justified from the study. Consultation with SW State Emergency Service, and Biodiversity and Conservation Division is recommended to ensure there are no significant impacts of the proposal on flood prone land. This will inform the delegate of the Secretary as to whether the inconsistency with this Direction can be justified as of minor significance.

Direction 5.10 Implementation of Regional Plans

The planning proposal is consistent with the CWORP as outlined in section 4.2 of this report. Therefore, the proposal is consistent with the objectives of this Direction.

Direction 6.1 Approval and Referral Requirements

This Direction applies to all planning proposals. The proposal will not require any additional concurrence, consultation or referral of development applications to a Minister or public authority, nor identified additional development as designated development. Therefore, the proposal is consistent with this Direction.

Direction 6.3 Site Specific Provisions

This Direction applies as the planning proposal will allow a particular development to be carried out. The planning proposal is inconsistent with this Direction as it seeks a site specific APU on the subject site to permit subdivision and erection of five dwellings. The inconsistency is of minor significance as it only affects two lots and will allow for subdivision to occur to the MLS which applies to northern extent of the subject land. Therefore, the inconsistency with this Direction is considered justified.

4.5 State environmental planning policies (SEPPs)

State Environmental Planning Policy No 55—Remediation of Land

Council advise the subject site has been historically used for agriculture and was rezoned from Rural 1(c) to R5 Large Lot Residential during adoption of the Forbes LEP 2013. Therefore, potential contamination of the subject site was considered and deemed acceptable for rezoning primarily for residential purposes and to a density of 2ha. As the proposal will permit the intended residential land uses and subdivision to the existing 2ha MLS without the need to rezone, clause 6 of SEPP 55 does not apply. Therefore, no further investigations into land contamination is required to meet the requirements of SEPP 55.

State Environmental Planning Policy No 44—Koala Habitat Protection

SEPP 44 applies to all land within the Forbes LGA. The southern portion of the subject site contains native vegetation which could consist of Koala habitat or feed

trees. The proposal is consistent with this SEPP as it will not impact any native vegetation on the southern portion of the subject site.

State Environmental Planning Policy (Primary Production and Rural Development) 2019

The Primary Production SEPP applies across the State and provides for the orderly use of land for sustainable primary production, residential development and biodiversity protection. The proposal will partially affect land zoned RU4 by permitted further subdivision of the land down to 2ha. The proposed location of the dwellings can avoid impact to high value biodiversity, flooding and groundwater sensitivity. The impact on primary production land is minimal as the land is not actively farmed and will be located within an existing large lot residential suburb. Therefore, the proposal is not expected to increase land use conflict and is consistent with this SEPP.

5. SITE-SPECIFIC ASSESSMENT

5.1 Social

Council's report states South Forbes is a highly desirable location to live as evidenced by the high land value and low turnover of houses. Development of two additional dwellings is expected to have a negligible to slight positive social effect on the Forbes area.

5.2 Environmental

The proposal is avoiding most environmental constraints of the land. The proposal will be located outside of the high hazard flood areas and be connected to reticulated water and sewage which will minimise the impact on groundwater sensitive land. Furthermore, information provided indicates ecological value of the land is mainly restricted to the southern portion of the land. The two proposed dwellings will be located on previously cleared, agricultural land which is not expected to result in a significant impact to any threatened, species, communities or their habitats. There will be no additional lots with frontage to the Lachlan River.

5.3 Economic

Council's report states Forbes is experiencing a housing shortage which is expected to increase with future development of the Inland Rail and Parkes intermodal development. No statistics have been provided to confirm this statement. Development of two additional dwellings is expected to have a negligible to slight positive economic effect on the Forbes area.

5.4 Infrastructure

The proposed dwellings will have access to all services, including reticulated sewage and water with minor extension of the existing services. The provision of two additional dwellings is not expected to place an unexpected burden on any services.

6. CONSULTATION

6.1 Community

The proponent has recommended a 14-day community consultation period for the planning proposal. The planning proposal is a low impact proposal as it is:

- Consistent with the pattern of surrounding land use zones and/or land uses.
- Consistent with the strategic planning framework.
- Presents no issues regarding infrastructure servicing.
- Not a principal LEP.
- Does not reclassify public land.

Due to the proposal creating two additional lots and dwelling house on flood prone land it is recommended that a 28 day public exhibition period occur.

6.2 Agencies

No agency consultation has been proposed by Council. Given the proposal will result in construction of two additional dwellings in a flood prone and groundwater sensitive area, it is recommended for consultation with NSW State Emergency Service, and Biodiversity and Conservation Division (regarding flooding) to occur as they may have interests in this proposal. This consultation will assist Council address the inconsistency with section 9.1 Direction – 4.3 Flood Prone Land.

7. TIME FRAME

No proposed time frame for completing the LEP has been provided by Council. The recommended timeframe is 12 months.

8. LOCAL PLAN-MAKING AUTHORITY

Council has requested to be the local plan-making authority and has no interests in the land. Therefore, Council should be authorised to be the local plan-making authority.

9. CONCLUSION

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

- Will enable the intent of the LEP controls to subdivide R5 land to 2ha to occur.
- Is consistent with relevant local, regional and State strategic planning.
- Consultation with State agency regarding flood risk should provide clarity to the capacity of the area to host an additional two dwellings without exacerbating the existing flood risk.

10. RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. agree that any inconsistencies with section 9.1 Directions -1.5 Rural Lands and 6.3 Site Specific Provisions are minor or justified; and
2. note that the consistency with section 9.1 Directions - 4.3 Flood Prone Land is unresolved and will require justification and consultation with agencies.

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

1. Prior to community consultation, consultation is required with the following public authorities/organisations under section 3.34(2)(d) of the Act to comply with the requirements of relevant section 9.1 Direction - 4.3 Flood Prone Land:

- NSW State Emergency Service.
- Department of Planning, Industry and Environment – Biodiversity Conservation Division.

Each public authority/organisation is to be provided with a copy of the planning proposal and any relevant supporting material and given at least 21 days to comment on the proposal.

2. Prior to community consultation, Council is to provide the Department of Planning, Industry and Environment – Western Region, a copy of each agency response and justification to demonstrate consistency with section 9.1 Direction – 4.3 Flood Prone Land. Should the inconsistency be justified Council is to request approval to proceed to community consultation.
3. 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).
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. The planning proposal authority is authorised as the local plan-making authority to exercise the functions under section 3.36(2) of the Act subject to the following:
 - (a) the planning proposal authority has satisfied all the conditions of the Gateway determination;
 - (b) the planning proposal is consistent with section 9.1 Directions or the Secretary has agreed that any inconsistencies are justified; and
 - (c) there are no outstanding written objections from public authorities.
6. Prior to the submission of the planning proposal under section 3.36 of the Act, an Additional Permitted Use map must be prepared and be compliant with the

Department's 'Standard Technical Requirements for Spatial Datasets and Maps' 2017.

7. The time frame for completing the LEP is to be **12 months** following the date of the Gateway determination.



30.1.20

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31.1.20

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