

17 January 2020

Department of Planning, Infrastructure and Environment  
PO Box 58  
NSW 2830

Attn: Damien Pfeiffer

**Subject:**        *Response to letter date 15 May 2019*

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Dear Damien,

I refer to your letter dated 15 May 2019 requesting further information regarding the Proposed LEP Amendment for 23 and 25 Lower Wambat Street, Forbes. Council has reviewed your letter and worked with the applicant to amend their proposal so as to have greater strategic merit and now presents an amended planning proposal seeking gateway determination.

The amended planning proposal now proposes to create an Additional Permitted Use (APU) that will allow the subdivision of land subject to certain conditions. Council is also open to the proposal being amended to be a Local Provision within the LEP, so long as the objectives of the Planning Proposal are met. It is seen that the use of an APU or Local Provision results in a better outcome compared to initially proposed spot rezoning as it maintains each minimum lot size and ensures that development can only occur in the low hazard flood liability land.

Council has considered the further information you requested in the subject letter and makes the following comments:

1. The amended planning proposal has strategic merit as it allows two additional lots greater than 2ha to be created within land that has a minimum lot size of 2ha. Council notes that the southern portion of the subject land is zoned RU4 Primary Production. It is the position of Council that the lots as they currently operate do not meet the objectives of the RU4 Small Lot Primary Production zone as they do not meet the minimum lot size and are of a size that is impractical for most agricultural purposes. The purpose of zoning the land as RU4 Large Lot Residential was to prevent residential development in the floodway. The planning proposal therefore fulfils the purpose of the zone in this location as it will require building envelopes preventing development in the floodway.
2. The objectives of the southern portion of the lots being zoned RU4 Primary Production is to prevent development within the Floodway. Council acknowledges this as its true objective in this location, and this is discussed further in the assessment report. Therefore, the Planning Proposal meets the "de facto" objectives of this clause

as it will require building envelopes to be created at the time of subdivision around the existing curtilage outside of the floodway thus fulfilling the practical objectives of the zone and ensuring the correct placement of future dwellings (replacement or otherwise).

3. Councils Flood Study has just undergone a peer review at the request of Council. The peer review, and the response to the peer review by the consultants are now being considered by OEH. In both flood studies, over 50% of the land, and the location of the proposed building envelopes, are in low hazard land. The 2001 flood study designates this portion of the land as *Low Hazard Flood Storage* while the 2018 flood study designates it *Low Hazard Flood Fringe*. It is therefore seen that in both flood studies the proposal is suitable and in fact the flood liable nature of the site has been reduced by the 2016 flood study.
4. The subject sites are located on land which is mapped as flood prone in the Forbes LEP 2013 and therefore an inconsistency with 9.1 Direction 4.1 Flood Prone Land is required. Refined flood mapping shows over 50% of the subject site being within the Low Hazard Flood Storage zone, with the southern portion being High Hazard Flood Way. The 2018 Flood Study (DRAFT) designates less land as High Hazard Flood Way and a greater portion as Low Hazard Flood Fringe (and even some sections being flood free). The section that is defined as High Hazard Flood Way is inappropriate for dwellings due to steep contour, and therefore it is highly appropriate to designate a building envelope which excludes the High Hazard portion of land. On the proposed blocks that retain the existing dwelling, a dwelling envelope remains vital to guide future development on the land into the future.
5. There are also several direct routes that remain Low Hazard until the Flood Free portion of South Forbes, Camp Hill. This allows for the safe evacuation of residents during a flood event.
6. The proposal uses Schedule 1 of the LEP to allow the subdivision, so as to place controls on any future development preventing structures within the High Hazard Flood Way area. The 2018 Flood Study estimates that the Low Hazard land will have flood height varying between 0.2 and 0.6 metres, with the connecting road being 0.2 centimeters. This is unlikely to impede evacuation routes by vehicle or on foot. Therefore, the inconsistency with Ministerial Direction 4.1 is justifiable.
7. Ministerial Direction 1.2 applies as the southern portion of the land is zoned RU4 Small Lot Primary Production. As discussed in this assessment report previously, the subject land does not operate as a small lot primary production and is not used for the purposes of primary production. In essence, it operates as large lot residential or peri-urban blocks. It is therefore seen that the inconsistency with this ministerial direction is justified as it does not currently operate as Rural Land.
8. Council accepts that the proposal is inconsistent with Direction 15 of the Central West and Orana Regional Plan. However, as the proposal will prevent future development in the High Hazard area, the development will find a balance between allowing residential subdivisions in rural areas as desired by the community, and increasing resilience to natural hazards. Therefore, the inconsistency is justifiable.

9. There is no negative social and economic impact of the development in flood prone land as the land that will be developed is *Low Hazard Flood Storage* (2001 Study) or *Low Hazard Flood Fringe* (2018 Study), both of which are suitable for development up to a certain fill level in accordance with the *Forbes Development Control Plan 2013*. The Floodway land is unsuitable for development due to steep contours. Regardless of this, the creation of a building envelope as part of the proposal will prevent development in land that may impact the flow of flood waters.
10. The development will not impact access to the adjoining lot (Lot 5 DP 618865) as this lot has direct access to Wambat Street and is not part of the subdivision.
11. Council will require the extension of a reticulated sewer main prior to release of the subdivision certificate or issue of the Construction Certificate for any proposed dwellings on the subject lot. This is suitable for flood liable land and is in accordance with the *Forbes Development Control Plan 2013* and Engineering Guidelines for development within the South of Forbes.

I trust this information is of assistance. The amended Planning Proposal has been reviewed in accordance with the *Environmental Planning and Assessment Act 1979* and the Department's Guidelines. Council is seeking a Gateway Determination that delegates the plan making functions to Forbes Shire Council.

Should you have any enquiries, please contact Eliza Noakes, Town Planner, on (02) 6850 2300 (option 1).

Yours faithfully



Paul Bennett  
**Director**  
**PLANNING & GROWTH**