

# PLANNING PROPOSAL ASSESSMENT

## Additional Permitted Use: 23 and 25 Lower Wambat Street, Forbes

### Background

Council has received a planning proposal to have an additional permitted use for the subdivision of 23 and 25 Lower Wambat Street Forbes. Currently the land cannot be subdivided because it has a split minimum lot size, being half 2ha and half 10ha. Council has received legal advice that any subdivision must meet all minimum lot sizes on the land and as such a Planning Proposal is required. The intent of the additional permitted use is to:

- Provide for the ability to subdivide the land into four portions of 2ha
- Ensure any future subdivision is sensitive to environmental constraints

### Analysis

The key objective of this planning proposal is to allow the subdivision of the land into four 2ha lots. The land currently is in two lots and has two dwellings. Both dwellings are positioned in the portion of the land that has a minimum lot size of 2ha. The land is zoned both RU4 – Small Lot Primary Production and R5 – Large Lot Residential. It is intended that the Additional Permitted Use will prohibited the approval of a dwelling in the RU4 – Small Lot Primary Production land. The objectives for R5 – Large Lot Residential are:

- To provide residential housing in a rural setting while preserving and minimizing impacts on environmentally sensitive locations and scenic quality.
- To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.
- To ensure that development in the area does not unreasonably increase the demand for public services of public facilities.
- To minimize conflict between land uses within this zone and land uses within adjoining zones.

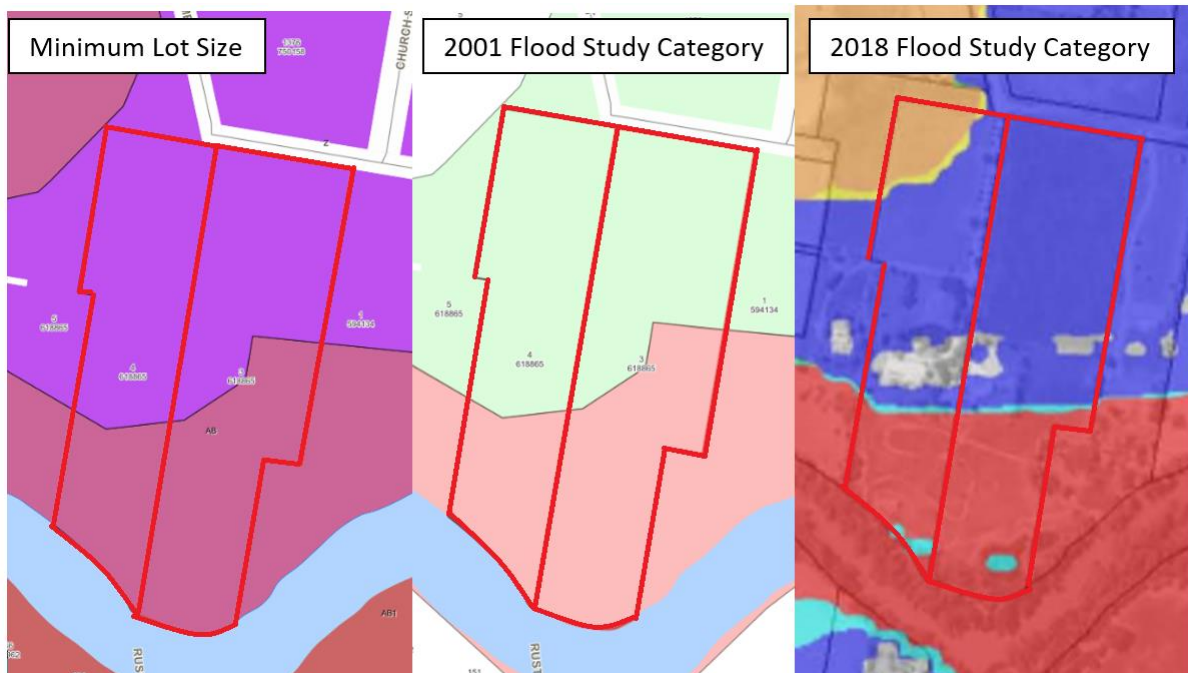
Therefore, the primary objective of this zone is to provide peri-urban residential development while minimizing environmental impact and conflict between adjoining zones. In looking at the context of the area, dwellings are permissible on most lots surrounding the subject lot, subject to consent from Council via the Development Assessment process. However, as the subject land has direct frontage to the river, it is subject to a split Minimum Lot Size which prevents this from occurring. This is because when land that has two or more minimum lot sizes is subdivided, it must meet comply with the larger of the two lot sizes. If the land had been created so that there was a lot that did not have frontage to the river (ie, what this development is proposing), a dwelling could occur. The split Minimum Lot Size of the subject land is an abnormality of the area which this planning proposal seeks to resolve. Several options were considered as alternatives, and the option discussed in the proposal is deemed the most appropriate way to address the abnormality.

### *Why is there a split minimum lot size?*

The minimum lot size of the subject land was determined during the creation of the Forbes LEP 2013 to correlate with the flood liability of the land. The LEP designated the High Hazard Flood Way land as 10ha minimum lot size to prevent residential development for safety purposes and to prevent an

increase in flood waters due to over development. The subject planning proposal speaks to these objectives by requiring a building envelope that excludes the high hazard land, meaning no development will be permitted within the 10ha MLS land.

Council is currently in the process of completing a new flood study, which decreases the High Hazard category of the land, and allows for the entire northern portion of the lots (including proposed new lots) to be within **Low Hazard Flood Storage**. This will be discussed in greater detail further into the report.



## Options Explored

The options presented in this case are the following:

1. Do nothing
2. Spot Rezoning – change the Minimum Lot Size just for the subject lot
3. Option as proposed using Schedule 1 of LEP

### Do nothing

The “Do Nothing” option is available to the applicants. However, Council’s Community Strategic Plan states that Council should be taking steps to release housing lots in desirable areas. As such, this is seen as justification to work towards allowing the subdivision of land.

### Spot rezoning

This option would involve changing the Minimum Lot Size of the 10ha portions only which would allow the subdivision of the land to four 2ha blocks as proposed. However, it would set a precedence for the Shire in increasing density in High Hazard flood liable land and doesn’t provide any controls in preventing the development on the high hazard portion.

### Schedule 1 of LEP – Proposed.

This option seeks to amend Schedule 1 of the LEP to allow the subdivision of this portion of the land, subject to certain controls. The benefit of this option is that it allows the most efficient use of the

land, while enshrining controls that prevent development in the High Hazard flood liable portions of the lot. This is seen as the best outcome, as it allows for the residential land to be used to its fullest potential, while preventing development in the floodway land.

### Strategic justification

The planning proposal addressed the strategic justification of the proposal adequately in terms of the Central West and Orana Regional Plan. Other matters for consideration include the current LEP and the Community Strategic Plan.

### Current Local Environmental Plan

As the current local environmental plan designates the land proposed to be used for future dwellings is 2ha, and it is interpreted by Council that the intent of the LEP was to allow dwellings one dwelling per every 2 hectares on this land, while preserving the floodway. This planning proposal allows for the intent of the LEP to be fully realized, while protecting the high hazard land from future development. It is considered that this is the key strategic justification for the proposal. This proposal allows for the exclusion of the high hazard portion of land in practice by enshrining the requirement of a building envelope which excludes the High Hazard Flood Storage area.

### R5 – Large Lot Residential Zone:

Objective	Justification
To provide residential housing in a rural setting while preserving and minimizing impacts on environmentally sensitive locations and scenic quality.	The proposal meets this objective as it will increase the supply of residential housing in rural settings. It protects the environmentally sensitive land – being the High Hazard Flood Way area – by enshrining in the LEP that a building envelope must be created to prevent the development of any structures within the High Hazard land into the future.
To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.	The South of Forbes is considered an extremely desirable place to live. It is expected that future development will arise in this area, as subdivisions and additional dwelling are already permissible.
To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.	The land is already designated to accommodate Large Lot Residential land at 2 hectares minimum lot size, and as such it does not unreasonably increase the demand for public services or facilities. The applicant is responsible for extending the sewer main.
To minimize conflict between land uses within this zone and land uses within adjoining zones.	This proposal enshrines the area as a peri-urban part of Forbes while preserving the river banks.

### RU4 – Small Lot 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. This is because they do not meet the minimum lot size of the zone 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 zoning in this location as it will require building envelopes preventing development in the floodway.

### Community Strategic Plan

Councils CSP states “new residential subdivisions ... need to be identified and provided to facilitate continued population and economic growth across the Shire” as a priority for the Direction “Rural and Urban Land Use”. As this proposal is allowing for the creation of future residential subdivisions, it meets this priority.

Furthermore, the proposal is in line with the following strategies of the CSP:

*“RU2 Develop appropriate land use planning measures that facilitate diversity and choice in housing and in rural and urban living.”*

*“RU4 Ensure that there is adequate land supply and subdivisions to accommodate future population growth and facilitate commercial and industrial expansion.”*

*“RU8 Facilitate the development of subdivisions to support ageing-in-place for elderly people”*

Direction RU8 is particularly important for this area. Real estate data shows that land in this area is tightly held real estate, with very little turn over in comparison to other areas of Forbes. This area is identified as an ideal location for retirees who are coming off the land, but want to remain in peri-urban large blocks.

Furthermore, the real estate data shows a higher average housing price for the area. This combined with the lower turnover identifies that the demand for residential land in Southern Forbes is high. By following the route of an Additional Permitted Use, more residential land will become available while preventing development in the high hazard flood categorised land.

### Central West and Orana Regional Plan

The proposal is generally in accordance with the Central West and Orana Regional Plan.

Direction	Justification
<b>Direction 1: Protect the region’s diverse and productive agricultural land</b>	The land is currently zoned both R5 – Large Lot Residential and RU4 Small Lot Primary Production. The subject land does not currently comply with this direction as discussed above, and as such it is considered unreasonable to assess the development against this direction.
<b>Direction 2-11</b>	Unaffected
<b>Direction 12: Plan for greater land use compatibility</b>	As the land proposed to be used for dwellings is designated Large Lot Residential, with the land proposed to be used for dwellings being 2ha Minimum Lot Size, this planning proposal allows the greatest use of the land.
<b>Direction 13: Protect and Manage Environmental Assets</b>	The proposal will not impact any environmental assets.
<b>Direction 14: Manage and conserve water resources for the environment</b>	The area of the land that development will be permitted on is Low Hazard Flood Storage. Dwellings are permissible in this flood category of land so long as it complies with the controls in the Forbes DCP.

	The site is listed as Groundwater vulnerable, and it is a requirement of any subdivision of the site that Sewer be extended to service the blocks. This will prevent any impact on groundwater in the area.
<b>Direction 15: Increase resilience to natural hazards and climate change</b>	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.
<b>Direction 16: Respect and Protect Aboriginal Heritage assets</b>	There is no known Aboriginal heritage on the site.

## Ministerial Directions

The proposal is generally in accordance with all Ministerial Directions. The following three Ministerial Directions are of note:

### 1.2 Rural Land

This Ministerial Direction 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.

### 2.1 Environmental Protection Zones

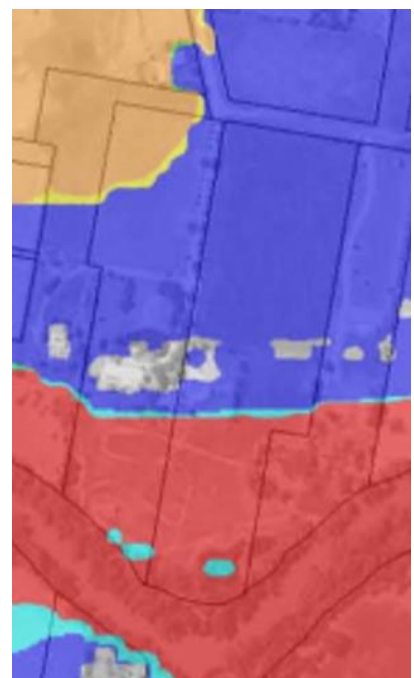
This direction applies as the subject site is mapped as having groundwater vulnerability. The planning proposal does not reduce the environmental protection standards of the land as any future subdivision will be subject to the extension of the sewer to service the lots. Any development which occurs from this planning proposal would be assessed for environmental impacts at DA stage and mitigated accordingly.

### 4.3 Flood Prone Land

The subject sites are located on land which is mapped as flood prone in the Forbes LEP 2013. 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.

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.

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.

The controls for dwellings in Low Hazard Flood Storage are enshrined in Chapter 3 of the Forbes DCP which states:

- “Habitable floor levels to be equal to or greater than the Adopted Flood Level plus 0.5m freeboard.”
- “All structures to have flood compatible building and components below the Adopted Flood Level.”
- “Applicant to demonstrate that any structure can withstand the forces of floodwater, debris and buoyancy up to and including the Adopted flood.”
- “The development is to be consistent with any relevant flood evacuation strategy.”
- “Development shall not block the conveyance of floodwaters across the floodplain.”
- “Filling of a maximum of a 1/3 of allotment up to 0.5m above the adopted flood level permitted provided this does not result in any significant effect on the conveyance of flood waters or flood levels.”
- “No external storage of materials below the design floor level which may cause pollution or be potentially hazardous during any flood.”

It is believed that the controls within the Forbes Shire Council DCP are adequate to manage any issues relating to development in flood prone land.

As the proposal prevents development in the High Hazard area of the proposal, and Councils DCP will ensure appropriate controls in accordance with the Floodplain Manual are put into place via the Development Assessment process, the variation to this ministerial direction is considered minor in nature and justifiable.

## Site-Specific Assessment

### Social

The South of Forbes Township is a highly desirable area to live. This is demonstrated via the low turnover of residential stock in the area and the higher than average prices as available on the Valuer General website. The desire for residential subdivisions was also clearly identified the Community Strategic Plan. As such, this proposal will have a positive social impact.

### Environmental

The land is mapped as having groundwater vulnerability. As a result, in accordance with the *Forbes Development Control Plan 2013*, any subdivision will be subject to the extension of the Sewer main to service the blocks. This will allow for further blocks in the area to be connected to the sewer and not septic, allowing for a positive environmental impact.

### Economic

Forbes currently has an identified housing shortage, especially in the river road area. Future industrial development relating to the Inland Rail Rub is expected to cause an increase in population for Forbes. Therefore, an increase in housing stock will have a positive impact.

## Conclusion

It is recommended that the planning proposal be adopted for the following reasons:

- Making use of the Additional Permitted Use clause enshrines conditions to the subdivision including a building envelope preventing development in the High Hazard flood areas;
- The requirement of a building envelope minimizes the impact on flooding, justifying the variation to Ministerial Direction 4.3;
- It is considered to be in the public interest to allow further subdivisions in this area because of the directions of Councils Community Strategic Plan;
- It is interpreted that the intent of the 2013 LEP was to allow subdivision on this land, and thus the proposal has strategic merit;
- It is the most appropriate use for the site, and allows the site to be used to its full potential.