

PLANNING PROPOSAL

AMENDMENTS TO FORBES LOCAL ENVIRONMENTAL PLAN
2013



Premise

ADDITIONAL PERMITTED USE

23 AND 25 LOWER WAMBAT STREET, FORBES

PREPARED FOR:

MS LOUISE BERNARDI

OCTOBER 2019



Report Title:	<i>Planning Proposal</i>
Project:	<i>Amendment to Forbes Local Environmental Plan 2012</i>
Client:	<i>Ms Louise Bernardi</i>
Report Ref.:	<i>219008_PP_002A.docx</i>
Status:	<i>Final (Revised)</i>
Issued:	<i>30 October 2019</i>

Premise Australia Pty Ltd and the authors responsible for the preparation and compilation of this report declare that we do not have, nor expect to have a beneficial interest in the study area of this project and will not benefit from any of the recommendations outlined in this report.

The preparation of this report has been in accordance with the project brief provided by the client and has relied upon the information, data and results provided or collected from the sources and under the conditions outlined in the report.

All information contained within this report is prepared for the exclusive use of Louise Bernardi to accompany this report for the land described herein and are not to be used for any other purpose or by any other person or entity. No reliance should be placed on the information contained in this report for any purposes apart from those stated therein.

Premise accepts no responsibility for any loss, damage suffered or inconveniences arising from, any person or entity using the plans or information in this study for purposes other than those stated above.

TABLE OF CONTENTS

ABBREVIATIONS.....	IV
BACKGROUND	1
1.1 INTRODUCTION	1
1.2 SCOPE OF REPORT	1
1.3 STRUCTURE.....	1
OVERVIEW.....	2
2.1 THE SUBJECT SITE	2
2.1.1 SITE DESCRIPTION AND LOCATION.....	2
2.2 DEVELOPMENT INTENT.....	2
2.2.1 EXISTING LAND ZONING	3
2.2.2 EXISTING MINIMUM LOT SIZE RESTRICTIONS	3
2.2.3 PROPOSED ADDITIONAL PERMITTED USE	4
2.2.4 PROPOSED DEVELOPMENT OBJECTIVES	5
2.2.5 SERVICES	5
2.3 DEVELOPMENT CONSTRAINTS.....	6
2.3.1 TOPOGRAPHY AND SOILS.....	6
2.3.2 FLORA AND FAUNA.....	6
2.3.3 BUSHFIRE	6
2.3.4 FLOODING.....	6
2.3.5 CONTAMINATION	10
2.4 SOCIAL AND CULTURAL CONSIDERATION.....	11
2.4.1 ABORIGINAL ARCHAEOLOGY.....	11
2.4.2 EUROPEAN HERITAGE.....	11
2.5 PRECEDENT.....	11
2.6 STRATEGIC CONSISTENCY	11
INTENT AND PROVISIONS	12
3.1 OBJECTIVE	12
3.2 EXPLANATION OF PROVISIONS	12
JUSTIFICATION	13
4.1 NEED FOR THE PLANNING PROPOSAL.....	13
4.1.1 RESULT OF ANY STRATEGIC STUDY OR REPORT	13
4.1.2 BEST MEANS OF ACHIEVING THE OBJECTIVES OR INTENDED OUTCOMES, OR IS THERE A BETTER WAY?.....	13
4.2 RELATIONSHIP TO STRATEGIC PLANNING FRAMEWORK	14
4.2.1 CONSISTENT WITH THE OBJECTIVES AND ACTIONS OF THE APPLICABLE REGIONAL OR SUB-REGIONAL STRATEGY.....	14
4.2.2 CONSISTENT WITH COUNCIL'S LOCAL STRATEGY OR OTHER LOCAL STRATEGIC PLAN.....	14
4.2.3 CONSISTENT WITH APPLICABLE STATE ENVIRONMENTAL PLANNING POLICIES.....	15
4.2.4 CONSISTENT WITH APPLICABLE S9.1 (2) MINISTERIAL DIRECTIONS – 3.1 RESIDENTIAL ZONES	16
4.3 ENVIRONMENTAL, SOCIAL AND ECONOMIC IMPACTS.....	19
4.3.1 IS THERE ANY LIKELIHOOD THAT CRITICAL HABITAT OR THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES, OR THEIR	

	HABITATS, WILL BE ADVERSELY AFFECTED AS A RESULT OF THE PROPOSAL?	19
4.3.2	ARE THERE ANY OTHER LIKELY ENVIRONMENTAL EFFECTS AS A RESULT OF THE PLANNING PROPOSAL AND HOW ARE THEY PROPOSED TO BE MANAGED?	19
4.3.3	HAS THE PLANNING PROPOSAL ADEQUATELY ADDRESSED ANY SOCIAL AND ECONOMIC EFFECTS?.....	19
4.4	STATE AND COMMONWEALTH INTERESTS	19
4.4.1	ADEQUATE PUBLIC INFRASTRUCTURE FOR THE PROPOSAL?.....	19
4.4.2	VIEWS OF STATE/COMMONWEALTH PUBLIC AUTHORITIES CONSULTED IN ACCORDANCE WITH THE GATEWAY DETERMINATION?.....	19
	COMMUNITY CONSULTATION.....	20
5.1	TYPE OF COMMUNITY CONSULTATION REQUIRED.....	20
	REFERENCES.....	21
 APPENDICES		
APPENDIX A		
<i>AHIMS Search Result</i>		

ABBREVIATIONS

Abbreviation	Full Name
PP	Planning Proposal
DPE	NSW Department of Planning and Environment
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
SEPP	State Environmental Planning Policy
LEP	Local Environmental Plan
AHD	Australian Height Datum
LGA	Local Government Authority

Background

1.1 INTRODUCTION

Premise has been commissioned by Louise Bernardi to prepare a Planning Proposal (PP) to amend the *Forbes Local Environmental Plan 2013* (FLEP) to include an Additional Permitted Use at 23 to 25 Lower Wambat Street, Forbes, being to permit subdivision over the land to a Minimum Lot Size of 2 hectares, and thereby enabling the site to be subdivided with the consent of Council.

Lot 3 has an area of approximately 5 hectares and Lot 4 has an area of approximately 3.8 ha. Both properties currently contain dwellings. This land is part zoned RU4 – Primary Production Small Lots (southern extent) and part zoned R5 – Large Lot Residential (northern extent). A minimum lot size (MLS) for the purposes of subdivision of 2 ha applies to the R5 portion and the applicable MLS for the RU4 zoned land is 10 ha.

The intention of the PP is to enable the further subdivision of the two parcels of land, with the capacity to build dwellings on the subdivided lots.

The proposal is considered to be of a minor nature and in this respect approval is sought from the Director-General of the Department of Planning, Industry and Environment as part of the Gateway Determination.

Details of the proposal's compliance with relevant strategic, regional, and local planning instruments, state environmental planning policies, and ministerial directions are contained in the following sections.

1.2 SCOPE OF REPORT

This PP has been prepared in accordance with the NSW Department of Planning's advisory documents '*A Guide to Preparing Local Environmental Plans*' and '*A Guide to Preparing Planning Proposals*'. The latter document requires the PP to be provided in five (5) parts, those being;

- *Part 1* – A statement of the objectives or intended outcomes of the proposed LEP;
- *Part 2* – An explanation of the provisions that are to be included in the proposed LEP;
- *Part 3* – The justification for those objectives, outcomes, and provisions and the process for their implementation;
- *Part 4* – Mapping; and
- *Part 5* – Details of the community consultation that is to be undertaken on the Planning Proposal.

It is noted that Part 4 would be confirmed following a Gateway Determination of this Planning Proposal by the NSW Department of Planning and Environment.

1.3 STRUCTURE

This PP is provided in the following structure;

- **Section 2** provides an overview of the subject site; the development intent; and development constraints;
- **Section 3** provides a statement of the objective and explanation of provisions of the PP;
- **Section 4** provides justification regarding the need for the PP; outlines its relationship to strategic planning strategies; and overviews the environmental, economic, and social impacts of the proposal;
- **Section 5** provides the proposed mapping amendments relating to the PP area; and
- **Section 6** details how community consultation is to be undertaken with respect to the PP.

Overview

2.1 THE SUBJECT SITE

2.1.1 SITE DESCRIPTION AND LOCATION

The Planning Proposal is lodged in relation to two (2) parcels of land, located in a semi-rural and large lot residential setting, approximately 1 kilometre south of Forbes at 23 and 25 Lower Wambat Street. The subject allotments are formally known as Lots 4 and 3 in DP 618865, with Lot 4 being approximately 3.8 hectares in size and Lot 3 being approximately 5 hectares in size.

Figure 1 below provides an aerial view of the subject site and locality.



Figure 1: The subject site

The site features vehicular access to each lot via Lower Wambat Street, situated at the northern frontage of the lots. The site also features a 210m frontage to the Lachlan River which is situated along the southern boundary.

2.2 DEVELOPMENT INTENT

The intent of this PP is to allow subdivision over land that features a split zoning and existing large lot residential characteristics, thus minimising conflict between land uses. This allows appropriately zoned land the potential for subdivision in the future, and development of future residential dwellings, subject to separate consent being granted.

2.2.1 EXISTING LAND ZONING

The land immediately surrounding the site is considered to be semi-rural and residential in character. The existing Land Zoning Map – sheet LZN_005B of the *Forbes Local Environmental Plan 2012* (FLEP), represents a mixed predominant land zoning of RU4 – Primary Production Small Lots and R5 – large Lot Residential, in the area. The subject site falls within both of these land zones, as represented in **Figure 2** below, with the subject allotments being outlined in red. The variety of rural and also residential land zonings is due to the sites close proximity to both the Lachlan River and the Forbes urban area.

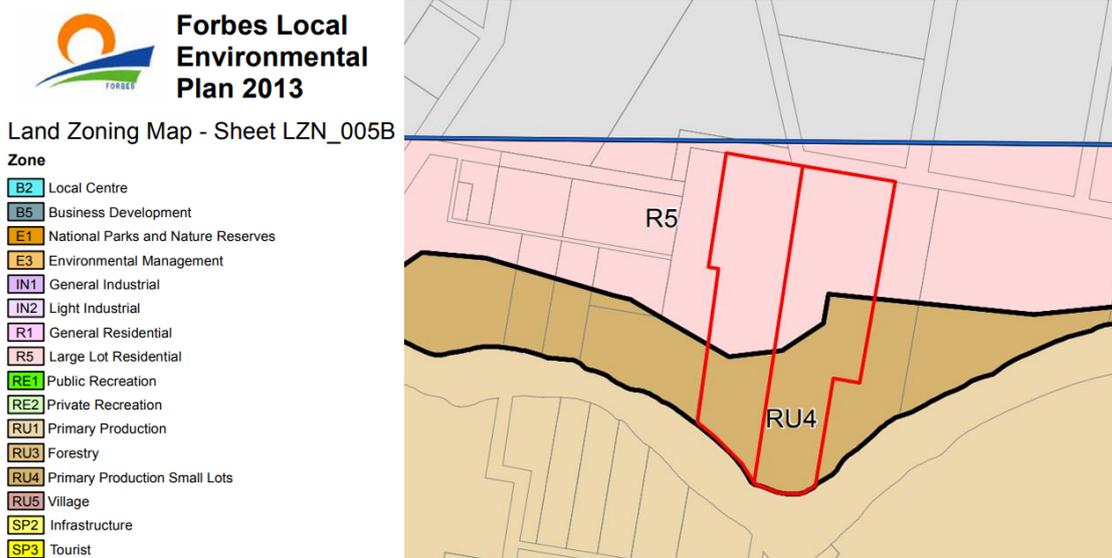


Figure 2: Existing Land Use Zoning extract

The RU4 zoning does not fully reflect the subject site, nor the adjoining allotments in context of their actual sizing and on-site operations. It is noted there are a number of large lot residential allotments, alongside many residential dwellings and onsite uses in the locality of a similar size to those to be realised via this planning proposal and future subdivision, including smaller lots within the RU4 zone fronting the river.

2.2.2 EXISTING MINIMUM LOT SIZE RESTRICTIONS

By reference to the Minimum Lot Size Map – Sheet LSZ_005B the site is currently burdened by two minimum lot sizes. The predominant minimum lot size for the RU4 zoned land is that of 10 ha, whereas the R5 zoned land features a minimum of 2 ha. The minimum lot size boundary reflects the zone boundary, which in turn reflects the 1:100 year flood planning area LEP mapping. This is discussed later in this report.



Forbes Local Environmental Plan 2013

Lot Size Map - Sheet LSZ_005B

Minimum Lot Size (sq m)

K	550
U1	1000
U2	1500
V	2000
W	4000
Y	1 ha
Z	2 ha
AB1	10 ha
AB2	40 ha
AD	100 ha
AE	200 ha
Refer to Clause 4.1 (4A)	

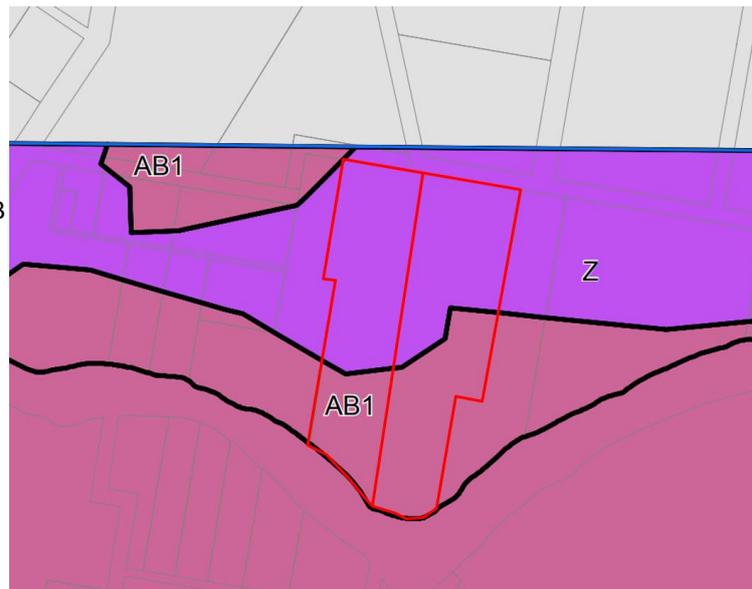


Figure 3: Existing Minimum Lot Size LEP mapping

2.2.3 PROPOSED ADDITIONAL PERMITTED USE

The intention of the additional permitted use is to provide a 'best fit', more practical application of land use and ability to subdivide. The APU is to permit subdivision over all of the land to a Minimum Lot Size of 2 hectares, and thereby enabling the site to be subdivided with the consent of Council.

The intention of the PP is to enable the further subdivision of the two parcels of land, with the capacity to build dwellings on the subdivided lots. By reference to the current lot size applying to the land, it is not currently possible to carry out the subdivision as proposed.

The entirety of the subject site is proposed to feature an additional permitted use. At present the Forbes LEP does not have an additional permitted use map.

The implication of the current split zoning is that each area is obliged to ensure that any lot created via subdivision achieves the appropriate minimum lot size. While the subdivision of these lots has the potential to achieve the 2 ha MLS applying to the R5 zone, the 10 ha MLS applying to the RU4 zone cannot be achieved.

The APU will allow for future subdivision of this land to create additional allotments that could feature a lawful dwelling on each future allotment.

In this regard the APU would need to be included in the provisions of the FLEP, as it is required in order for the future development of these sites to be permissible and compliant.

For the avoidance of doubt, any future dwellings would be located on the current R5 zoned land and not within the RU4 zone. This is achieved by virtue of the fact that the existing dwellings on the two lots are both in the more southerly extent of the lots, meaning there is insufficient room to create new lots that would provide an opportunity for dwellings to be constructed within the RU4 zone. This would be further reinforced via the implementation of building envelopes in respect of a future subdivision development application.

A concept lot layout is provided in **Figure 4** which demonstrates the logical design of future lots would not result in additional dwellings being constructed within the RU4 zone.



Figure 4: Concept lot layout satisfying 2 ha minimum lot size

2.2.4 PROPOSED DEVELOPMENT OBJECTIVES

The subject allotments that form part of the PP, and the proposed additional permitted use over this site, is to be developed and maintained generally in accordance with the following objectives:

- Allow future subdivision of land for large lot residential purposes in accordance with the 2 ha minimum lot size.
- Provide opportunities for subdivision to create lots consistent with the smaller of the two minimum lot sizes.
- To provide residential housing setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.

The additional permitted use specific to the two allotments involves no material change to the existing development of the subject site.

2.2.5 SERVICES

The subject site has access to the Forbes Shire Council's reticulated water and sewerage disposal systems, subject to some extension of services. Water is currently available to the site while sewer services currently terminate at the southern end of Wambat Street, approximately 750 metres from the subject site. These sewer services would need to be extended at the cost of the applicant to service all lots in any proposed subdivision.

Telecommunication connections are available to the site, as are electricity services, with overhead powerlines traversing the site, running in an east-west orientation.

2.3 DEVELOPMENT CONSTRAINTS

2.3.1 TOPOGRAPHY AND SOILS

The subject site is situated on the northern banks of the Lachlan River. Majority of the northern portion of the site is cleared of significant vegetation, however there are scattered established trees in some parts, with a belt of vegetation along the river frontage.

The land subject to this PP is located within the South West Slopes Bioregion. Soils within this region, according to the Office of Environment & Heritage – Bioregions of NSW, are:

The overall pattern of soils in these landscapes is one where shallow, stony soils are found on the tops of ridges and hills. Moving downslope, texture contrast soils are the norm with subsoils derived from the underlying weathered rock and the topsoils being an homogenised surface mantle of coarser material derived from all parts of the slope.

This soil type is consistent with being able to sustain both residential development and uses. Future residential accommodation would be subject to separate assessment, including geotechnical investigation as required.

2.3.2 FLORA AND FAUNA

In accordance with Terrestrial Biodiversity Map BIO_005 of the FLEP, the subject site features areas that are mapped as being of high biodiversity sensitivity. The areas indicated as high biodiversity are generally situated over the southern portions of the land, along the Lachlan River frontage. This is in line with the majority of vegetation over the site being situated along the river frontage.

This land would not be subject to clearing of vegetation as a result of this PP. In addition, the concept proposed subdivision, in accordance with the attached Concept Lot Layout, attached as **Figure 4**, it is also represented that no vegetation would be adversely impacted as a result of land subdivision, noting that this would be the subject of further assessment at DA stage.

2.3.3 BUSHFIRE

The subject site is not considered bushfire prone land in accordance with Forbes Shire Council bushfire prone lands mapping.

2.3.4 FLOODING

A review of Lots 3 and 4 in DP 618865 indicate these lots are within both 'Low Hazard Flood Storage' and 'High Hazard Floodway', as shown in detail in Figure 1 below.

The 'High Hazard Floodway' classification is located on the southern extent of Lots 3 and 4 in DP 618865, as the southern extent of these lots abounds the Lachlan River. It is noted that no development is proposed within this 'High Hazard Floodway' classification. The northern portion of each of these lots is located within the more regional floodplain, as noted by the low hazard classification.

A copy of Council's 'Forbes Flood Study' dated November 2001, completed by Sinclair Knight Merz, was obtained, which is the basis for the flood mapping on Council's website. From a review of this model the surrounding defined flood levels (DFLs) have been extracted and are presented on **Figure 5** below.

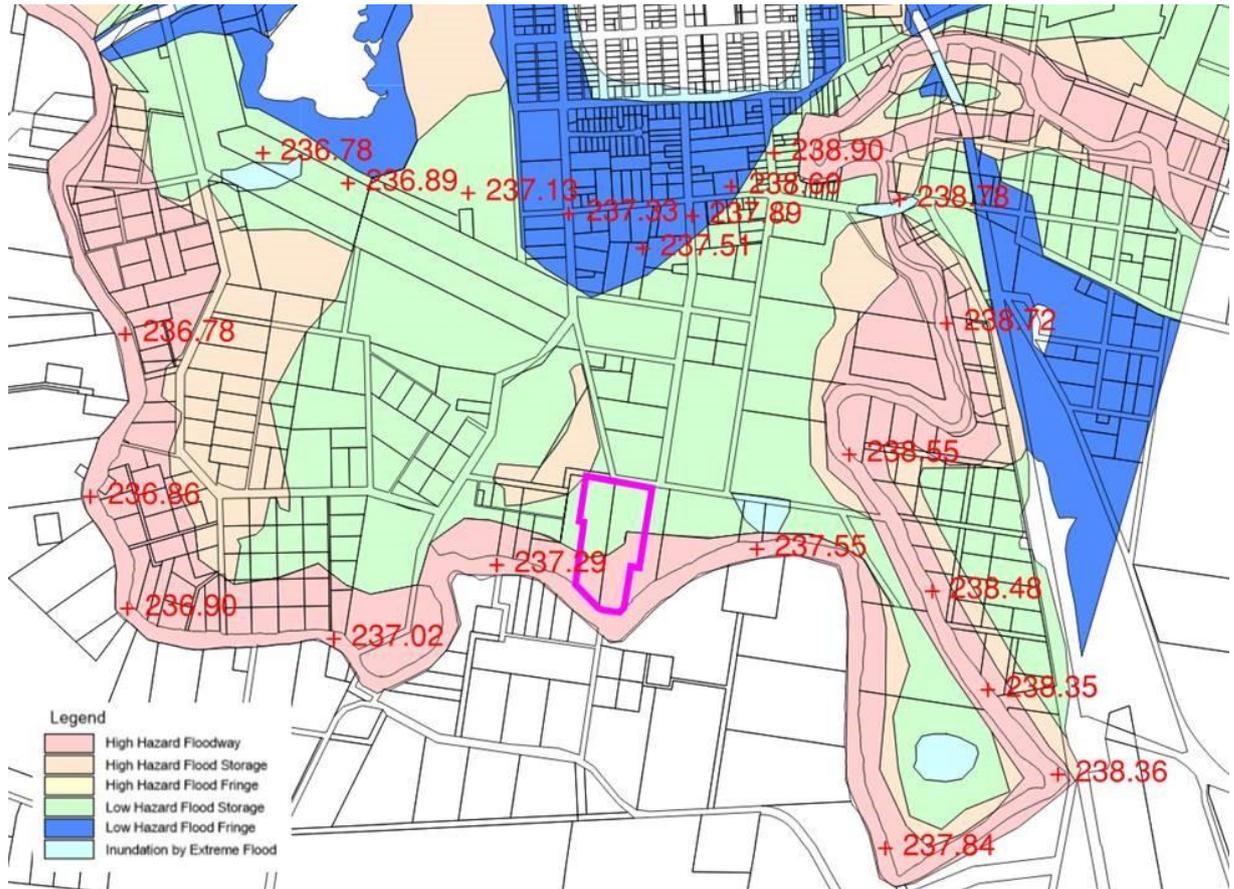


Figure 5: Extract of Council's Flood Risk Precincts including predicted Defined Flood Levels (m AHD)

Based on these details it is anticipated that the DFL for Lots 3 and 4 in DP 618865 would be of the order of 237.50m AHD.

Figure 6 below indicates the predicted flood inundation extent (with the arrows showing anticipated flooding beyond the project study area).

This indicates that the floodplain width in the vicinity of Lots 3 and 4 in DP 618865 would be of the order of 2.33km.



Figure 6: Extract from SKM's 1952 Flood Inundation on 2000 Topography

Premise have obtained the current available topography for Lots 3 and 4 in DP 618865, which is sourced from the Parkes 5m DEM data provided by the NSW government, as shown in **Figure 7** below.

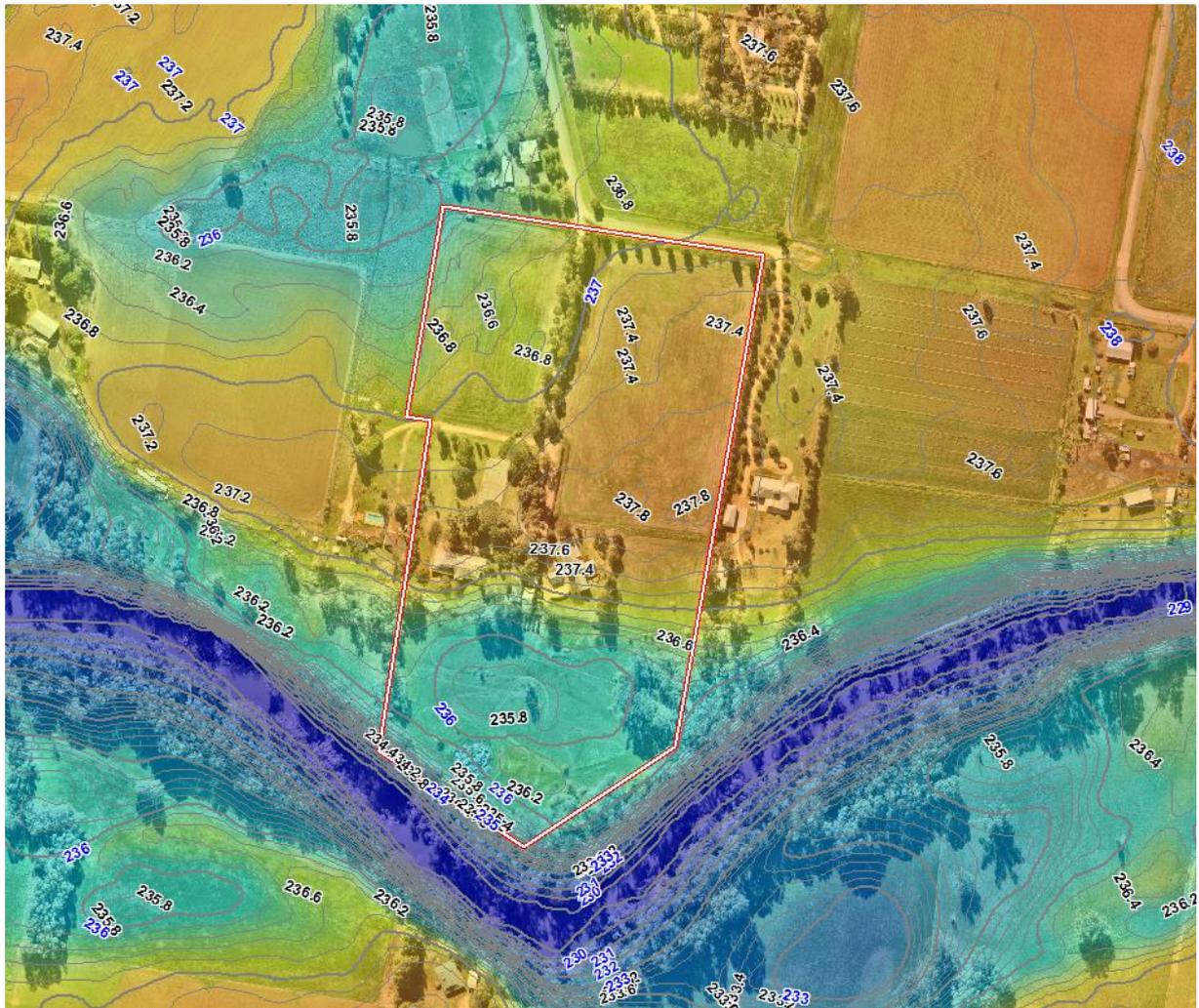


Figure 7: Site Topography

This indicates that the typical levels on the site, within the 'Low Hazard Flood Storage' Zone is 237.4mAH, hence an anticipated depth for the Defined Flood Event would be in the order of 0.1m.

Including an additional 0.5m of freeboard this estimates a total depth of 0.6m. This would be considered the maximum fill depth necessary for the construction of a house pad on a future potential lot.

In considering the width of the floodplain (2.33km) and the total depth of the fill (0.6m), and the location of the potential house pad within the 'Low Hazard Flood Storage' zone within the floodplain it is anticipated that this will not create any significant adverse flood level impacts on the floodplain. It is anticipated that any potential impacts within the floodplain would be localised around the future pad only.

It is recommended that consideration is given to the placement of the future pads for the existing dwellings on Lots 3 and 4 in DP 618865 and the neighbours. This placement should ensure that the potential localised flood level impacts do not adversely impact on the existing dwellings. This can be achieved by placing the house pads sufficiently away from the existing dwellings (say around 100m) or by placing the future homes on stilts, allowing free flowing conditions under the future dwelling.

It is considered the above recommendations are achievable. In accordance with the Concept Lot Layout, attached as **Figure 4**, the proposed lots are of sufficient dimensions to allow the 100m set back to any proposed pads to be complied with.

Given the arrangement of the concept lot layout, and the constraints of the land with respect to future subdivision design, any future dwellings would be located in the northern extent of the site. This would

mean they would be close to the road and would have adequate capacity to safely evacuate the site in the event of a flood emergency, in the same way as the residents of the existing dwellings on the land. Also, noting the level of the land and the discussion above, the maximum depth of water on the site would be 0.1 metres. It is therefore ensured that safe wading depth as per the floodplain manual is achievable for any future dwelling.

Noting any future dwellings would be developed on the R5 portion of the land (per the concept layout) the following range of land uses would be potentially able to be developed, as per the below.

2 Permitted without consent

Environmental protection works; Extensive agriculture; Home-based child care; Home occupations; Roads; Water reticulation systems

3 Permitted with consent

Bed and breakfast accommodation; Building identification signs; Business identification signs; Dual occupancies; Dwelling houses; Home industries; Roadside stalls; Any other development not specified in item 2 or 4

4 Prohibited

Agriculture; Air transport facilities; Airstrips; Amusement centres; Animal boarding or training establishments; Biosolids treatment facilities; Boat building and repair facilities; Car parks; Cemeteries; Charter and tourism boating facilities; Commercial premises; Correctional centres; Crematoria; Entertainment facilities; Exhibition homes; Exhibition villages; Forestry; Freight transport facilities; Function centres; Heavy industrial storage establishments; Helipads; Highway service centres; Industrial retail outlets; Industrial training facilities; Industries; Marinas; Mooring pens; Moorings; Mortuaries; Open cut mining; Passenger transport facilities; Public administration buildings; Recreation facilities (indoor); Recreation facilities (major); Registered clubs; Research stations; Residential accommodation; Resource recovery facilities; Restricted premises; Rural industries; Service stations; Sewage treatment plants; Sex services premises; Signage; Storage premises; Tourist and visitor accommodation; Transport depots; Truck depots; Vehicle body repair workshops; Vehicle repair stations; Warehouse or distribution centres; Waste disposal facilities; Water treatment facilities; Wharf or boating facilities; Wholesale supplies

By reference to the concept plan at **Figure 4** all of proposed Lot 1 would be within the R5 zone. As the zoning of the land will not change via this PP, there is no change to the FLEP that would result in any additional potentially sensitive land uses being made permissible in the R5 zone. Concept Lot 2 is predominantly within the R5 zone, with a portion in the south-eastern corner located within the RU4 zone. The range of permissible uses within the RU4 zone is more limited than within the R5 zone and therefore unlikely to lead to any additional impacts with respect to potentially sensitive land uses.

By virtue of the above assessment it is demonstrated that the proposed amendment would not increase risk to community members.

2.3.5 CONTAMINATION

The subject allotment has historically been utilised for agricultural purposes, primarily the grazing of cattle, and more recently for occupation in a large lot residential capacity. Table 1 of the *Managing Contaminated Land Planning Guidelines* (Guideline) states that agricultural activities may cause contamination. However, *Appendix A* of the Guideline *'Industries and Chemicals Used'* states that the associated chemicals with this use are fertilisers, insecticides, fungicides and herbicides. Given the primary agricultural use for the site has been the grazing of cattle, it is highly unlikely that any of the above mentioned forms of chemicals have been utilised on the site.

Furthermore, the subject area on this allotment that is specifically relevant to this PP has most been recently been utilised for residential purposes. It is therefore considered to be even more unlikely that the subject site has any form of contamination.

Consideration of the likelihood of contamination, and the need for remediation, has therefore been provided and the obligations of SEPP55 are satisfied.

2.4 SOCIAL AND CULTURAL CONSIDERATION

2.4.1 ABORIGINAL ARCHAEOLOGY

A search of the Aboriginal Heritage Information Management System (AHIMS) has revealed that no Aboriginal sites have been recorded in or near the subject site, nor have any Aboriginal places been declared in or near the subject site.

The result of the AHIMS search is attached at **Appendix A**.

2.4.2 EUROPEAN HERITAGE

Schedule 5 – Environmental Heritage of the *Forbes Local Environmental Plan 2012* does not identify any items of local heritage significance on the site. Likewise, the State Heritage Register does not identify any items of state heritage significance on the site.

2.5 PRECEDENT

As a site-specific additional permitted use, the proposal has the potential to be viewed as setting a precedent which other developers may seek to use to justify other re-zonings in the LGA. For the following reasons, it is considered this is unlikely:

- The positioning of the existing dwellings on the site ensures that a future subdivision would allow any future dwellings to be built outside the flood planning area;
- Other lots in the immediate locality are already smaller in size than the subject lots and benefit from the 2-hectare minimum lot size. As such, seeking the additional permitted use of allowing subdivision down to a minimum lot size of 2 hectares would not provide any measurable benefit. Any proposal seeking to allow the minimum lot size less than 2 hectares would result in development that is out of character with development in the locality. This PP would result in development that is in keeping with the existing character and therefore it could not be viewed as justifying further subdivision under 2 hectares;
- Lots to the south of the river are generally more significantly affected by flood impacts and for this reason would not be suitable for further development; and
- Lots further removed from this locality would not be expected to benefit from connection to reticulated services and would therefore result in greater impacts to the environment.

In short, the characteristics of this site are sufficiently unique such that it is unlikely that this PP would lead to the setting of an undesirable precedent.

2.6 STRATEGIC CONSISTENCY

The proposal is considered to be consistent with the strategic intent of the current LEP and adopted strategy in that it seeks to allow the subdivision of land within the R5 zone a minimum lot size of 2 hectare, consistent with surrounding land. As outlined via this planning proposal, the proposal does not introduce an additional risk to the environment than currently exists on the basis that dwellings can already be developed on surrounding land in the extreme flood inundation area (Figure 5

Intent and Provisions

3.1 OBJECTIVE

The objective of this Planning Proposal (PP) is to allow the Additional Permitted Use (APU) of subdividing to a Minimum Lot Size of 2 hectares on Lot 4 and 3 in DP 618865 at 23 and 25 Lower Wambat Street, Forbes pursuant to the *Forbes Local Environmental Plan 2012* (FLEP).

This additional permitted use is to provide the ability of subdivision of the two parcels of land, with the capacity to build dwellings on the subdivided lots (one dwelling per lot).

3.2 EXPLANATION OF PROVISIONS

The PP affects the *Additional Permitted Uses Map APU_005B* of the *Forbes Local Environmental Plan 2012*.

The PP seeks to include the APU for the land affected, allowing subdivision to a minimum lot size of 2 hectares.

The specific wording of the proposed clause would be determined in consultation with DPIE and parliamentary counsel.

An indicative concept lot layout is provided in **Figure 4**.

Justification

The overarching principles that guide the preparation of PP's are:

- The level of justification should be proportionate to the impact the PP would have;
- It is not necessary to address a question if it is not considered relevant to the PP; and
- The level of justification should be sufficient to allow a Gateway determination to be made with confidence that the LEP can be finalised within the timeframe proposed.

The following justification addresses each relevant question applicable to the PP to ensure confidence can be given to the Gateway determination.

4.1 NEED FOR THE PLANNING PROPOSAL

4.1.1 RESULT OF ANY STRATEGIC STUDY OR REPORT

A Planning Proposal is required as an amendment to the FLEP is proposed. The objective is to allow the subdivision of the subject land to a Minimum Lot Size of 2 hectares on Lot 4 and 3 in DP 618865 at 23 and 25 Lower Wambat Street, Forbes.

The proposal is not specifically addressed via a strategic study or report however the impact is minor due to the small scale nature of the proposal and therefore it is considered that lack of strategic support via a local study is not a barrier to the PP proceeding.

Demand exists for additional residential land and subsequent use of the site. The analysis at Section 2.3.4 adequately demonstrates the safety of future occupants and existing residents within the broader floodplain would not be adversely impacted.

4.1.2 BEST MEANS OF ACHIEVING THE OBJECTIVES OR INTENDED OUTCOMES, OR IS THERE A BETTER WAY?

The proposed approach is considered the best means of achieving the project objective.

Other alternatives considered but discounted include:

- Amend the LEP to introduce a specifically worded clause that applies to the subdivision of land within a split zone, to provide that the lesser standard should apply. The specific wording of this clause would need to be carefully considered to ensure it achieves the desired outcome and such a clause would affect all land that is affected by a split zoning (i.e. not just the subject land). A large number of LEPs created under the standard instrument feature a clause relating to split zones; OR
- Amend the LEP to reduce the MLS applying to the land to be 2 hectares.

In reviewing split zones clauses in other standard instrument LEPs, we note a standard wording has been adopted which reflects an intent to ensure that the resulting subdivision achieves the lesser applicable minimum lot size (in this case 2 ha) and that all of the land in the other zone (in this case the RU4 land) would be contained within subdivided lot. This is not achievable for the subject land and therefore it would be necessary to agree a revised wording with Council, and subsequently the Department of Planning and Environment (DPE).

It is considered the adopted and as presented approach for an Additional Permitted Use exclusively to the two allotments is the most appropriate approach. Discussions have occurred with Council whom are in favour of the proposed approach.

4.2 RELATIONSHIP TO STRATEGIC PLANNING FRAMEWORK

4.2.1 CONSISTENT WITH THE OBJECTIVES AND ACTIONS OF THE APPLICABLE REGIONAL OR SUB-REGIONAL STRATEGY

The *Central West and Orana Regional Plan* is a Regional Strategy that relates to the site and the APU proposal within the Forbes LGA and Central West Region. Specifically Direction 28: Manage Rural Residential Development, and the associated Actions. The relationship to Direction 28 is discussed below in Table 4.1.

Table 4.1 – Direction 28: Manage Rural Residential Development

Actions	Comment
<p>28.1 Locate new rural residential areas:</p> <p>Close to existing urban settlements to maximise the efficient use of existing infrastructure and services, including roads, water, sewer and waste services, and social and community infrastructure.</p> <p>To avoid and minimise potential for land use conflicts with productive, zoned agricultural land and natural resources</p> <p>To avoid areas of high environmental cultural or heritage significance, regionally important agricultural land or areas affected by natural hazards.</p>	<p>The site is an existing rural residential area and therefore this requirement is satisfied.</p> <p>The site is not considered productive agricultural land due to its predominant R5 zoning, and has not been viably used or managed in recent history.</p> <p>In accordance with the attached AHIMS Search, no Aboriginal sites or places have been recorded or declared on the site.</p> <p>The parcel of land largely consists of grassland, and no known threatened species or ecological communities are present.</p> <p>Subject site is mapped as being flood prone land, however this has been assessed, with details provided in Section 2.3.4 of this PP.</p>
<p>28.2 Enable new rural residential development only where it has been identified in a local housing strategy prepared by Council and approved by the Department of Planning and Environment.</p>	<p>No applicable local housing strategy.</p>
<p>28.3 Manage land use conflict that can result from cumulative impacts of successive development decisions.</p>	<p>It is not foreseen to result in land use conflict given the close proximity of the site to Forbes, and the surrounding lot sizes and associated existing dwellings.</p>

Source: Central West and Orana Regional Plan 2036

4.2.2 CONSISTENT WITH COUNCIL'S LOCAL STRATEGY OR OTHER LOCAL STRATEGIC PLAN

The Forbes Growth Management Strategy 2009 applies to the site and identifies the suitability of this land for residential purposes, subject to connection to reticulated services, including areas of low hazard flood storage. The proposal is therefore consistent with the endorsed strategy.

The proposal is consistent with the Forbes Community Strategic Plan 2018-2028, specifically Direction 4, which seeks to balance the needs of rural and urban land use. This includes preservation of rural land and providing a range of housing types to meet the demands of the community. The proposal provides for an additional two dwellings in an area strategically identified as suitable for residential purposes.

4.2.3 CONSISTENT WITH APPLICABLE STATE ENVIRONMENTAL PLANNING POLICIES

State Environmental Planning Policy No. 55 – Remediation of Land

Clause 6 of the *State Environmental Planning Policy No. 55 – Remediation of Land* requires the issue of contamination and remediation to be considered with a Planning Proposal. Given the current large lot residential nature of the land, and the proposed residential subdivision and associated use envisaged by this planning proposal, the land is considered to be acceptable on the basis that the receptor pathway for potential contamination to future users is consistent with the current level of usage.

State Environmental Planning Policy No. 64 – Advertising and Signage

The current zoning enables limited business uses subject to development consent from Council. If signage were to form part of a future development application the provisions of *State Environmental Planning Policy No. 64 – Advertising and Signage* would apply and the development would need to ensure the relevant provisions of the policy are achieved. The PP does not include provisions that contradict or hinder the application of this policy.

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

The aims of the *State Environmental Planning Policy (Primary Production and Rural Development) 2019* is to:

- (a) *to facilitate the orderly economic use and development of lands for primary production,*
- (b) *to reduce land use conflict and sterilisation of rural land by balancing primary production, residential development and the protection of native vegetation, biodiversity and water resources,*
- (c) *to identify State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land, having regard to social, economic and environmental considerations,*
- (d) *to simplify the regulatory process for smaller-scale low risk artificial waterbodies, and routine maintenance of artificial water supply or drainage, in irrigation areas and districts, and for routine and emergency work in irrigation areas and districts,*
- (e) *to encourage sustainable agriculture, including sustainable aquaculture,*
- (f) *to require consideration of the effects of all proposed development in the State on oyster aquaculture,*
- (g) *to identify aquaculture that is to be treated as designated development using a well-defined and concise development assessment regime based on environment risks associated with site and operational factors.*

From a review of the specific applicable parts of the SEPP, it is noted that there are no specific clauses that relate to this PP.

It is further note that the land is not viable primary production land due to its small size, partial R5 zoning and strategic identification for residential purposes.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

The provisions of *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004* would continue to apply to residential affected development in accordance with the provisions of this policy. The PP does not include provisions that contradict or hinder the application of this policy. Any future dwellings would be required to comply with these provisions.

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

The provisions of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* would continue to apply to the land generally consistent with that achievable under the current land zoning. The PP does not include provisions that contradict or hinder the application of this policy.

State Environmental Planning Policy (Infrastructure) 2007

The provisions of *State Environmental Planning Policy (Infrastructure) 2007* would continue to apply consistent with that achievable under the current zoning. The PP does not include provisions that contradict or hinder the application of this policy

State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007

The site is not located within any identified resource areas, potential resource areas or transitional areas. There are no known existing mines, petroleum production operations or extractive industries in the area of the PP or within its vicinity. Given existing development on the site and within the immediate locality the PP would be of minor significance and would not further restrict development potential or create land use conflict beyond existing arrangements.

4.2.4 CONSISTENT WITH APPLICABLE S9.1 (2) MINISTERIAL DIRECTIONS

The Minister for Planning and Infrastructure, under Section 9.1(2) of the EP&A Act issues directions that local Councils must follow when preparing PP's for new Local Environmental Plans. The directions cover the following broad categories:

1. Employment and Resources
2. Environment and Heritage
3. Housing, Infrastructure and Urban Development
4. Hazard and Risk
5. Regional Planning
6. Local Plan Making

The following discussion demonstrates the means by which this PP may be inconsistent with the relevant Section 9.1 directions.

Direction 1.3 – Mining, Petroleum Production and Extractive Industries

Ministerial Direction 1.3 – Mining, Petroleum Production and Extractive Industries is not applicable as the PP affected land does not prohibit the mining of coal or other minerals, production of petroleum, or winning or obtaining of extractive materials or restricting the potential development of such by permitting a land use that is likely to be incompatible with such development.

Direction 2.1 – Environment Protection Zones

Ministerial Direction 2.1 – Environment Protection Zones does apply to the PP as some areas of the subject site is mapped by the *Forbes Local Environmental Plan 2013* Terrestrial Biodiversity Map BIO_005B as a sensitive area. It is however witnessed that the subject site and immediate surrounding locality features existing established vegetation along the Lachlan Rover frontage. This would not be affected as a result of the PP.

In addition, over the rest of the site, the isolation of trees and vegetation from larger portions of other vegetation, as well as the pre-existing residential land use of the site, it is unlikely that these areas would be a significant habitat for any threatened species of flora or fauna. Future dwellings, via the concept layout, would be developed on existing cleared land with no significant impact to biodiversity likely. Any future DA for subdivision would need to consider the applicable provisions of the *Biodiversity Conservation Act 2016*, including preparation of a biodiversity assessment report if required.

Direction 3.1 – Residential Zones

Ministerial Direction 3.1 – Residential Zones is applicable as the PP proposes an APU of the existing rural and residential zoned land.

The PP is consistent with the objectives of this direction as the additional permitted use:

- Would encourage a choice of housing types to provide for future housing needs, and;

- Would make efficient use of existing infrastructure and services.

The area forming part of the PP features road access off Lower Wambat Street, and overhead powerlines traversing the site for access to electricity.

Direction 3.3 – Home Occupations

Ministerial Direction 3.3 – Home Occupations is applicable as the proposed R5 Large Lot Residential zone permits dwelling houses. The objective of this direction is to encourage the carrying out of low-impact small business in dwelling houses. The PP maintains existing provisions that enable 'home occupations' to be carried out without the need of development consent.

Direction 4.3 – Flood Prone Land

Ministerial Direction 4.3 – Flood Prone Land is applicable as the southern extent of the site is mapped as flood prone. A comprehensive discussion of flood risk is contained in **Section 2.3.4**. This demonstrates that the PP is of minor significance and therefore may be legitimately inconsistent with the direction as per 4.3(9)(b).

Direction 5.10 – Implementation of Regional Plans

The Central West Orana Regional Plan 2036 (CWORP) is the applicable regional strategic planning document for the Forbes LGA and therefore applies to this proposal. The CWORP contains a central vision supported by a range of goals.

It is considered that the planning proposal is generally consistent with the vision and goals of the CWORP as outlined below:

- Action 12.4 Amend planning controls to deliver greater certainty of land use
 - The current split zoning creates confusion for the community and Council. The proposed APU provides greater certainty for the site and is therefore 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 site will have access to reticulated services and would therefore not be expected to have any detrimental impacts to groundwater vulnerable land. The land is outside the high hazard flood storage area. The proposal is therefore 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 site provides for the capacity to develop land that is outside of the high hazard flood storage area, and is therefore consistent with this action.

On the basis of the above, the proposal is consistent with the CWORP.

Direction 6.1 – Approval and Referral Requirements

Ministerial Direction 6.1 – Approval and Referral Requirements applies to all Planning Proposals forwarded for Gateway Determination by a local authority.

The proposed amendment to MLS does not include provisions that would trigger a need for concurrence, consultation, or referral to the State Government.

Direction 6.3 – Site Specific Provisions

Ministerial Direction 6.3 – Site Specific Provisions applies to all Planning Proposals forwarded for Gateway Determination by a local authority.

The PP proposes to create site specific development standards, which are in line with those currently within the principal environmental planning instrument. The minimum lot size of 2 hectares for the R5 zoned land is consistent with other R5 zoned land in the immediate Forbes area and the prevailing lot size of land fronting the river, particularly to the west.

4.3 ENVIRONMENTAL, SOCIAL AND ECONOMIC IMPACTS

4.3.1 IS THERE ANY LIKELIHOOD THAT CRITICAL HABITAT OR THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES, OR THEIR HABITATS, WILL BE ADVERSELY AFFECTED AS A RESULT OF THE PROPOSAL?

There are no proposed material changes as a result of the APU. The land forming the subject area of the PP consists of existing large lot residential characteristics, with scattered trees over the site and established vegetation traversing the banks of the Lachlan River. No known threatened species or ecological communities would be adversely affected by the APU on the basis that any future dwellings would be constructed in the northern extent of the site. Any future development of these sites would require due consideration of relevant environmental impacts noting the general consistency with lots sizes in the surrounding locality.

4.3.2 ARE THERE ANY OTHER LIKELY ENVIRONMENTAL EFFECTS AS A RESULT OF THE PLANNING PROPOSAL AND HOW ARE THEY PROPOSED TO BE MANAGED?

The PP proposes an APU to enable subdivision of the land to a minimum lot size of 2 ha over the entirety of the site, with no proposed work on site or physical alterations. Any future development of these sites would require due consideration of relevant environmental impacts be undertaken during a development application. The configuration of the land means that any future dwellings on the site would be outside of the high hazard flood storage area.

Council reticulated sewer and water services are available to the site and would be extended at the cost of the applicant to provide suitable services to any created lot via a future subdivision development application.

4.3.3 HAS THE PLANNING PROPOSAL ADEQUATELY ADDRESSED ANY SOCIAL AND ECONOMIC EFFECTS?

The proposed APU over the subject site would have minimal social and/or economic impacts on the surrounding locality. The proposal would facilitate the future subdivision of both allotments to allow future large lot residential development.

4.4 STATE AND COMMONWEALTH INTERESTS

4.4.1 ADEQUATE PUBLIC INFRASTRUCTURE FOR THE PROPOSAL?

The existing subject site and area features existing connections to public infrastructure. The site has vehicle access off Lower Wambat Street, and is traversed by overhead powerlines. The site is also of a size that allows future subdivision or residential development.

The site is serviced by reticulated water and reticulated sewer is available subject to minor extension works; these works would occur at the full cost of the applicant in the event subdivision were to occur.

4.4.2 VIEWS OF STATE/COMMONWEALTH PUBLIC AUTHORITIES CONSULTED IN ACCORDANCE WITH THE GATEWAY DETERMINATION?

The views of State and Commonwealth public authorities would be ascertained in accordance with the comments provided in the Gateway Determination.

Community Consultation

5.1 TYPE OF COMMUNITY CONSULTATION REQUIRED

Section 5.5.2 of 'A Guide to Preparing Local Environmental Plans' identifies two different exhibition periods for community consultation;

- Low Impact Proposals – 14 days; and
- All other Planning Proposals (including any proposal to reclassify land) – 28 days.

The Guide describes Low Impact Proposals as having the following attributes;

- *A 'low' impact planning proposal is a planning proposal that, in the opinion of the person making the gateway determination, is;*
 - *Consistent with the pattern of surrounding land use zones and/or land uses;*

The proposed amendment to include the site as an APU is minor in nature and would result in future lots that are consistent with prevailing lot sizes in the immediate locality.

- *Consistent with the strategic planning framework;*

Responses have been provided within section 4.2 of this report detailing the proposal's compliance with relevant local, regional and state planning strategies, policies, and ministerial directions.

- *Presents no issues with regard to infrastructure servicing;*

The future residential development of these sites would have access to sewer, water, and stormwater services, and would be connected with electricity and telecommunications facilities.

- *Not a principle LEP; and*

Not relevant.

- *Does not reclassify public land.*

The PP does not seek to reclassify existing public land.

In accordance with the responses to the above and the 'Low Impact Proposals' guide, the PP is considered to be of low impact and therefore a 14 day period of advertising is considered appropriate.

References

NSW Department of Planning & Environment (DP&E). 2016a, *A Guide to Preparing Local Environmental Plans*, DP&E, Sydney.

NSW Department of Planning & Environment (DP&E). 2016b, *A Guide to Preparing Planning Proposals*, DP&E, Sydney.

NSW Department of Planning & Environment (DP&E). 2017, *Orana and Central West Regional Plan 2036*, DP&E, Sydney

NSW Office of Environment & Heritage (OEH) 2016, Bioregions Overview – South Western Slopes Bioregion, accessed via: <https://www.environment.nsw.gov.au/bioregions/SouthWesternSlopes-Landform.htm>

Appendix A

AHIMS SEARCH RESULT

Jock Rodgers
Level, 62 Wingewarra Street
Dubbo New South Wales 2830
Attention: Jock Rodgers
Email: jrodders@geolyse.com

Date: 29 November 2018

Dear Sir or Madam:

AHIMS Web Service search for the following area at Lot : 4, DP:DP618865 with a Buffer of 0 meters, conducted by Jock Rodgers on 29 November 2018.

The context area of your search is shown in the map below. Please note that the map does not accurately display the exact boundaries of the search as defined in the paragraph above. The map is to be used for general reference purposes only.



A search of the Office of the Environment and Heritage AHIMS Web Services (Aboriginal Heritage Information Management System) has shown that:

0	Aboriginal sites are recorded in or near the above location.
0	Aboriginal places have been declared in or near the above location. *

If your search shows Aboriginal sites or places what should you do?

- You must do an extensive search if AHIMS has shown that there are Aboriginal sites or places recorded in the search area.
- If you are checking AHIMS as a part of your due diligence, refer to the next steps of the Due Diligence Code of practice.
- You can get further information about Aboriginal places by looking at the gazettal notice that declared it. Aboriginal places gazetted after 2001 are available on the [NSW Government Gazette \(http://www.nsw.gov.au/gazette\)](http://www.nsw.gov.au/gazette) website. Gazettal notices published prior to 2001 can be obtained from Office of Environment and Heritage's Aboriginal Heritage Information Unit upon request

Important information about your AHIMS search

- The information derived from the AHIMS search is only to be used for the purpose for which it was requested. It is not to be made available to the public.
- AHIMS records information about Aboriginal sites that have been provided to Office of Environment and Heritage and Aboriginal places that have been declared by the Minister;
- Information recorded on AHIMS may vary in its accuracy and may not be up to date. Location details are recorded as grid references and it is important to note that there may be errors or omissions in these recordings,
- Some parts of New South Wales have not been investigated in detail and there may be fewer records of Aboriginal sites in those areas. These areas may contain Aboriginal sites which are not recorded on AHIMS.
- Aboriginal objects are protected under the National Parks and Wildlife Act 1974 even if they are not recorded as a site on AHIMS.
- This search can form part of your due diligence and remains valid for 12 months.

Jock Rodgers
Level, 62 Wingewarra Street
Dubbo New South Wales 2830
Attention: Jock Rodgers
Email: jrodders@geolyse.com

Date: 29 November 2018

Dear Sir or Madam:

AHIMS Web Service search for the following area at Lot : 3, DP:DP618865 with a Buffer of 0 meters, conducted by Jock Rodgers on 29 November 2018.

The context area of your search is shown in the map below. Please note that the map does not accurately display the exact boundaries of the search as defined in the paragraph above. The map is to be used for general reference purposes only.



A search of the Office of the Environment and Heritage AHIMS Web Services (Aboriginal Heritage Information Management System) has shown that:

0	Aboriginal sites are recorded in or near the above location.
0	Aboriginal places have been declared in or near the above location. *

If your search shows Aboriginal sites or places what should you do?

- You must do an extensive search if AHIMS has shown that there are Aboriginal sites or places recorded in the search area.
- If you are checking AHIMS as a part of your due diligence, refer to the next steps of the Due Diligence Code of practice.
- You can get further information about Aboriginal places by looking at the gazettal notice that declared it. Aboriginal places gazetted after 2001 are available on the [NSW Government Gazette \(http://www.nsw.gov.au/gazette\)](http://www.nsw.gov.au/gazette) website. Gazettal notices published prior to 2001 can be obtained from Office of Environment and Heritage's Aboriginal Heritage Information Unit upon request

Important information about your AHIMS search

- The information derived from the AHIMS search is only to be used for the purpose for which it was requested. It is not be made available to the public.
- AHIMS records information about Aboriginal sites that have been provided to Office of Environment and Heritage and Aboriginal places that have been declared by the Minister;
- Information recorded on AHIMS may vary in its accuracy and may not be up to date .Location details are recorded as grid references and it is important to note that there may be errors or omissions in these recordings,
- Some parts of New South Wales have not been investigated in detail and there may be fewer records of Aboriginal sites in those areas. These areas may contain Aboriginal sites which are not recorded on AHIMS.
- Aboriginal objects are protected under the National Parks and Wildlife Act 1974 even if they are not recorded as a site on AHIMS.
- This search can form part of your due diligence and remains valid for 12 months.