

SECTION 59 PLANNING REPORT

Planning proposal details:

PP_2019_FORBE_002_00

Planning proposal summary:

The intent of the planning proposal is to permit with consent, subdivision and erection of five 'dwelling houses' at Lot 6 DP 619205 and Lot 1 DP 242593, River Road, Forbes. Currently the lots are zoned R5 Rural Residential with a split Minimum Lot Size (MLS) of 2ha and 10ha, based on flood risk. Council are seeking an amendment to Schedule 1, Additional Permitted Uses of the Forbes Local Environmental Plan 2013 to permit the subdivision and erection of the five dwellings to occur to the 2ha MLS.

Date of Gateway determination:

The Gateway determination was issued on the 10 October 2019

1.0 SUMMARY

This Planning Proposal is prepared to demonstrate the benefit of including an additional permitted use in Schedule 1 of the Forbes Local Environmental Plan 2013. The proposal aims to facilitate the practical and appropriate subdivision of Lot 6 DP 619205 and Lot 1 DP 242593 into 2 hectare allotments. Both allotments are presently in the same ownership.

Lot 6 DP 619205 has an area of 9.81 hectares and incorporates two minimum lot sizes under the provisions of the Forbes Local Environmental Plan 2013. The majority of the allotment already has a minimum lot subdivision size of 2 hectares. Small portions of the allotment have a minimum lot size of 10 hectares. These small portions are mapped to represent the parts of the allotment identified as being within the 'high hazard flood storage area' and not suitable for residential construction.

The intention of this planning proposal is to include an additional permitted use in Schedule 1 of the LEP that allows for the subdivision of lot 6 DP 619205 in a practical way that permits the subdivision of all areas of the allotment.

Intended Objectives

- To allow for the subdivision of Lot 6 DP 619205 into practical residential allotments that incorporate all areas of that lot.
- To allow for the creation of lots that facilitate the construction of dwellings outside the high hazard flood storage area
- To allow for subdivision and permissible development design that is consistent with the applicable planning controls and objective

2.0 GATEWAY DETERMINATION

Date gateway determination issued:	10/10/2019
Timeframe for completion of proposal:	12 months (10/10/2020)
Review request:	No
Compliance with conditions of Gateway determination:	Yes the conditions have been complied with.

3.0 COMMUNITY CONSULTATION

Dates of exhibition: 25 October 2019 until the 22 November 2019
Number of submissions received: 11 Submissions received

Issues raised during exhibition:

Objection 1	Lack of drainage in area. Land slopes towards their property, which has historically filled with water for weeks in heavy rain or flood. Concerned that any further development on this lot will cause greater impact.
Objection 2	Impact of new dwellings pushing floodwaters to adjacent properties
Objection 3	Impact of new dwellings changing the water flow and impacting neighbouring properties.
Objection 4	Impact on flow of flood waters. Increasing density in the area, not in keeping with the current uses. Increase in traffic and noise
Objection 5	Development does not meet Minimum Lot Size for 5 lots 1.46Ha is High Hazard Confusion around what mechanism is being used – building envelope or adjusting flood liability Setting precedence for future development in flood prone land Public Benefit Test Impact on flooding and drainage concerns
Objection 6	Increasing water run-off from the development Making the existing stormwater issues worse
Objection 7	Increasing the Flooding impacts in the area Drainage concerns – no way for the water to drain back into the river Old Gold Mine Shafts in the area
Objection 8	Raising of the flood levels, blocking the free flow of floodwater and will divert that water to adjoining blocks.
Objection 9	Not in keeping with character of neighbourhood Over development Impact on flooding
Objection 10	Objection to increased development in area Impact on stormwater flows Impact on floodwater storage capacity and flows
Objection 11	Objection to increased development in area Impact on stormwater flows Impact on floodwater storage capacity and flows

The submissions largely related to the same three themes, being storm water management, impact on floodwaters and objections to the increase in density in the area. This issues were also the main issues raised at the Community Information Session held on 20 November 2019, which had approximately 25 attendees. These have been addressed under each heading below.

Storm Water Management

The subject land generally slopes towards the east into a localised depression that exists on the western side of the site and extends into lots to the south east. This localised depression is consistent with the High Hazard Flood Storage hydraulic classification within the area. Stormwater flows from any roofed area of future developments will be directed to the table drain in River Road and subsequently away from this low lying area. Redirecting stormwater from building footprints to the River Rd drainage system will in effect reduce (albeit a very small reduction) the stormwater flows from these areas that are currently draining to the low lying area to the east. It is noted that future hardstand areas (such as driveways, paved areas etc) within the development will potentially increase stormwater flows to the west. These flows will be offset by the fact that roofed areas will flow to River Rd. In addition, the catchment area for flows draining to the localised depression is quite large, extending north towards Reymond St and east to College Rd. As such, any potential increase in stormflow off the development would have very minor to negligible effect on the current drainage issued experienced in the area.

Council are aware of the drainage issues that are currently experienced in the area due to the local depression within the Lower Wambat St region. Preliminary plans have been developed for the creation of a drainage corridor running north-south, adjacent Lower Wambat St and towards the Lachlan river which will allow this area to be drained during times of increased stormwater flows. This drainage corridor will also alleviate the issue of water being stored in the depression for extended periods after storm events and flooding. Plans are only at a preliminary stage, with the exact route and final design of the corridor needing to be confirmed. Construction of this drainage corridor will most likely involve the negotiation of easements through surrounding private land in order to be able to successfully drain the area to the Lachlan River.

Dwelling envelopes have been placed on the proposed subdivision plan to restrict building within the most elevated area of each proposed lot and also within areas zoned low hazard flood storage. Localised filling only within these development envelopes for buildings will be allowed and no filling will be allowed within the high hazard zoned areas of the site to ensure the conveyance of flood waters or flood levels within the area are not significantly affected.

Flooding

In response to the submissions that raised concerns about the impact of the development on flooding, the applicant provided a flood study that assessed the volume of water that will be displaced for a 40x40 (1600m²) platform. This would be sufficient to support a 300m² dwelling, 10m wide curtilage and a 100m² outbuilding. Results are listed below.

Proposed Lot	Lowest Existing RL	Average Depth of Fill (m)	Volume of storage lost to fill (m³)
34	RL236.50m	0.54	1,016
35	RL236.58m	0.58	1,092
36	RL236.58m	0.58	1,092
37	RL236.75m	0.49	908
38	RL236.60m	0.44	803

The report recommended that a caveat be placed on any future titles requiring any development is offset by an excavation of earth equal to the same volume. This is above and beyond the requirements of the Forbes Development Control Plan, and results in a *no adverse impact* on flooding from the development. This is typically achieved by undertaking detailed site survey to determine the existing contour levels, calculating the existing flood storage volume at all flood stages, and then designing a cut and fill strategy that maintains available flood storage volumes at each flood stage. The below figure demonstrates how this can be implemented.

As the proposal from the applicant's consultant results in a *no adverse impact* on the floodplain, it is the view of the assessment officer that the concerns raised in the submissions have been adequately addressed.

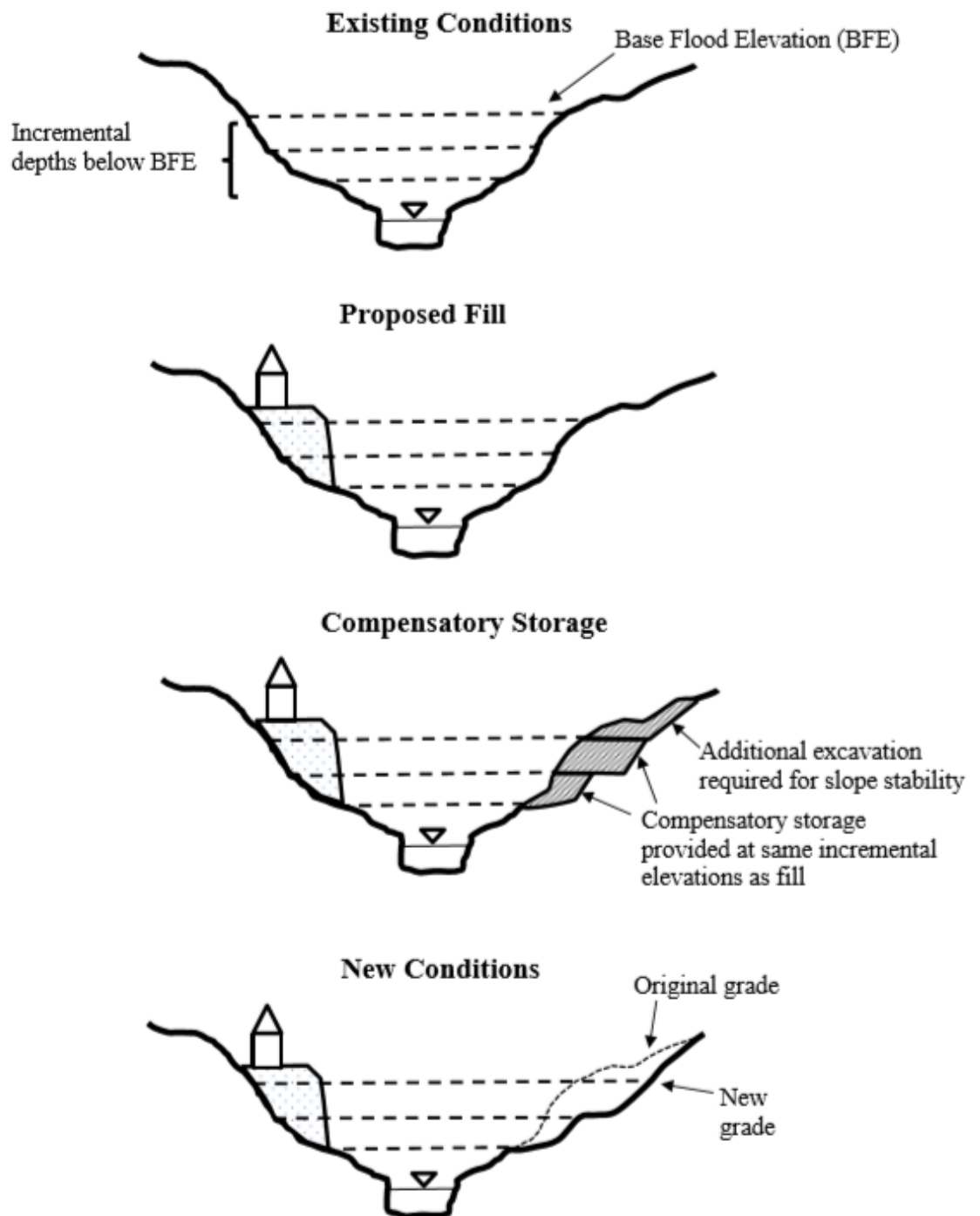


Figure 1. Conceptual model of compensatory storage requirements along a river to meet No Adverse Impact standard.

Increased Density

Multiple objections were received by Council which objected to increasing the density of the River Road area. It was argued by submitters that the character of the River Road area is semi-rural, large residential holdings with limited opportunities for new dwellings, and that this should be maintained by Council.

Under the Forbes Local Environmental Plan 1986, the Minimum Lot Size (MLS) of the subject area was 10ha. This was changed during the creation of the 2013 LEP to 2ha, which was subject to considerable consultation with community members and Council. It was evidentially felt by the Councillors and Community Members who engaged in the consultation process at the time that 2ha was an appropriate Minimum Lot Size for the residential area. The premise of this development is that 8.5ha of the subject land currently has a MLS of 2ha, with a 1.5ha "residual" amount being 10ha, preventing the subdivision of land. Therefore, it is argued that the strategic intent of the LEP is to allow a density of 1 house to every 2ha of land. This planning proposal allows for the intent of the LEP to be fully realized, while protecting the high hazard land from future development.

Therefore, the increased density is in line with the strategic intent of the Local Environmental Plan and is not considered out of character with the area or the strategic goals of Council.

Other objections received

Development does not meet Minimum Lot Size for 5 lots as 1.46Ha is High Hazard	The purpose of the proposal is to allow an exemption due to a discrepancy to the lot of land. Currently, the vast majority of the "River Road" area of Forbes is zoned R5 – Large Lot Residential with a Minimum Lot Size of 2ha. This means that dwellings are currently permissible on most lots surrounding the subject lot, subject to consent from Council via the Development Assessment process. The subject lot is one of the few abnormalities in the area, in that it has two minimum lot sizes which means that it is required to meet both minimum lot sizes. The objective of the dual MLS is to ensure development does not occur in the High Hazard Flood Storage area. The proposal achieves both objectives by enshrining a building envelope that prevents development in the subject lot.
How is it being done, building envelope or adjusting flood liability of land?	The Planning Proposal is for an <i>Additional Permitted Use</i> listed in Schedule 1 of the LEP that allows development not typically permissible in accordance with the LEP. The benefit of this clause is that allows Council to put conditions around this use, in this instance primarily around building envelopes which prevent development in the high hazard land and excavation to ensure no net impact on flooding.
Setting precedence for future development on the land	The development is not seen to set a precedence as there are very specific circumstances that allow this clause to be suitable.
Public Benefit Test	The development is seen to be within the public interest as it has been identified in the Central West Orana Plan and the Community Participation Plan to allow thoughtful development in areas sought after to live in.

4.0 VIEWS OF PUBLIC AUTHORITIES

Consultation was required with SES and OEH (Now Department of Planning, Industry and Environment – Biodiversity and Conservation Division) A submission was received by OEH who did not object to the proposal so long as the updated flood modelling from 2018 was used. The planning proposal has been amended to reflect this. No submission as received from SES.

5.0 CONSISTENCY WITH S.117 DIRECTIONS AND OTHER STRATEGIC PLANNING DOCUMENTS

The planning proposal accompanying this report addresses the consistency and inconsistencies with the s117 Directions.

6.0 PARLIAMENTARY COUNSEL OPINION

Parliamentary Counsel opinion has been sought and attached to this report.

7.0 OTHER RELEVANT MATTERS

No other relevant matters have been raised.

8.0 MAPPING

No mapping requires updating as a result of this planning proposal.

9.0 RECOMMENDATION

Council recommends that the plan is to be made as per the attached planning proposal.