

Planning and Assessment

IRF19/6466

Gateway determination report

LGA	Forbes
PPA	Forbes Shire Council
NAME	Additional Permitted Use at River Road, Forbes (5 homes, 0 jobs)
NUMBER	PP_2019_FORBE_002_00
LEP TO BE AMENDED	Forbes Local Environmental Plan 2013
ADDRESS	River Road, Forbes
DESCRIPTION	Lot 6 DP 619205 and Lot 1 DP 242593
RECEIVED	19 August 2019/ Further Information on 4/10/2019
FILE NO.	IRF19/6466
POLITICAL DONATIONS	There are no known donations or gifts to disclose and a political donation disclosure is not required.
LOBBYIST CODE OF CONDUCT	There have been no known meetings or communications with registered lobbyists with respect to this proposal.

1. INTRODUCTION

1.1 Description of planning proposal

The 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 is seeking an amendment to Schedule 1, Additional Permitted Uses (APU) of the Forbes Local Environmental Plan 2013 to permit the subdivision and erection of the five dwellings to occur to the 2ha MLS principal development standard.

1.2 Site description

The subject site is approximately 3km south of Forbes CBD and is still within the township of Forbes. This southern area of Forbes, which includes all of River Road, is a mixture of large lot residential with remnant small agricultural blocks (**Figure 1**), which are yet to be developed for residential purposes. The subject site is approximately 250m north of the Lachlan River which places the subject site within groundwater vulnerable and flood prone areas.

Lot 6 DP 619205 is approximately 9.81ha and Lot 1 DP 242593 is approximately 0.16ha (**Figure 2**), combined the total area of the subject site is 9.97ha. The subject site has been previously cleared for agricultural purposes including cropping and grazing and retains only a few paddock trees.

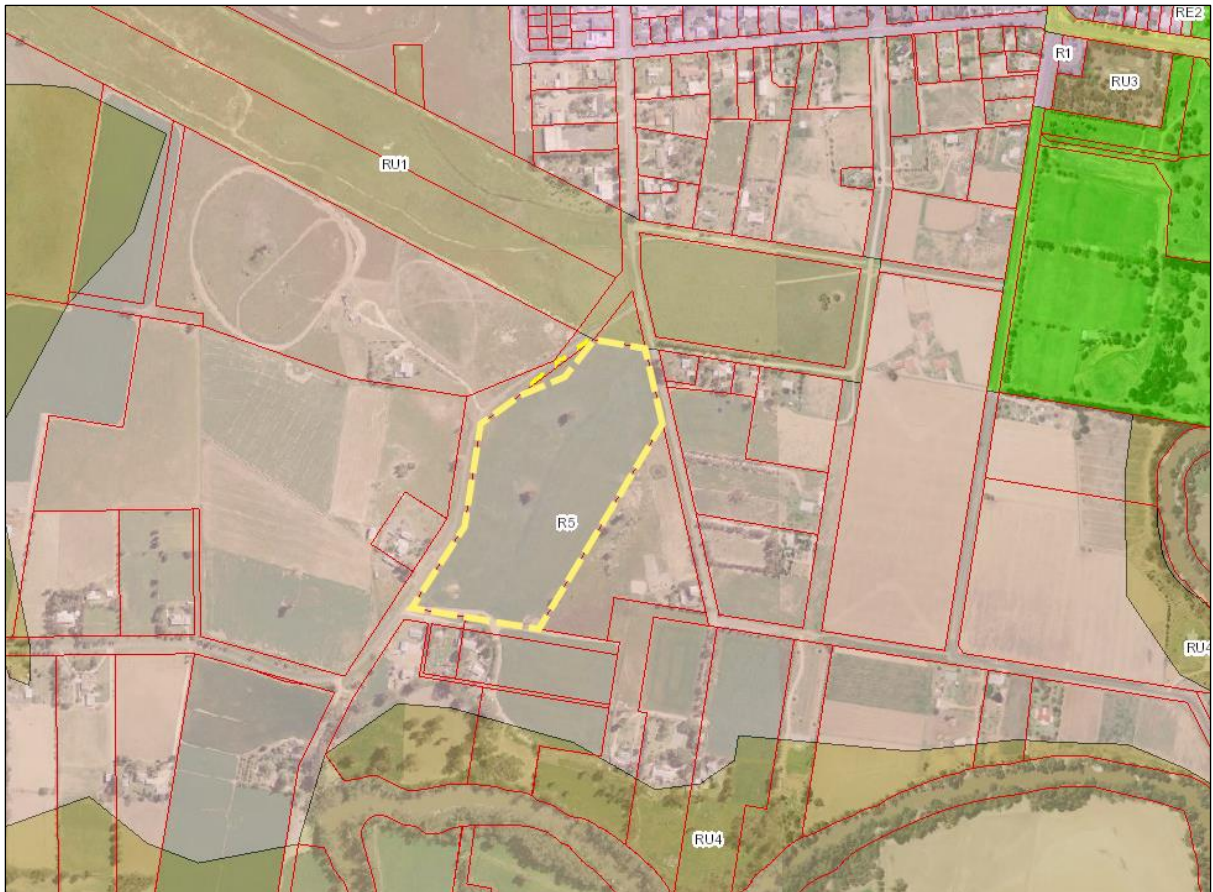


Figure 1: Land zoning of the subject site and surrounds.

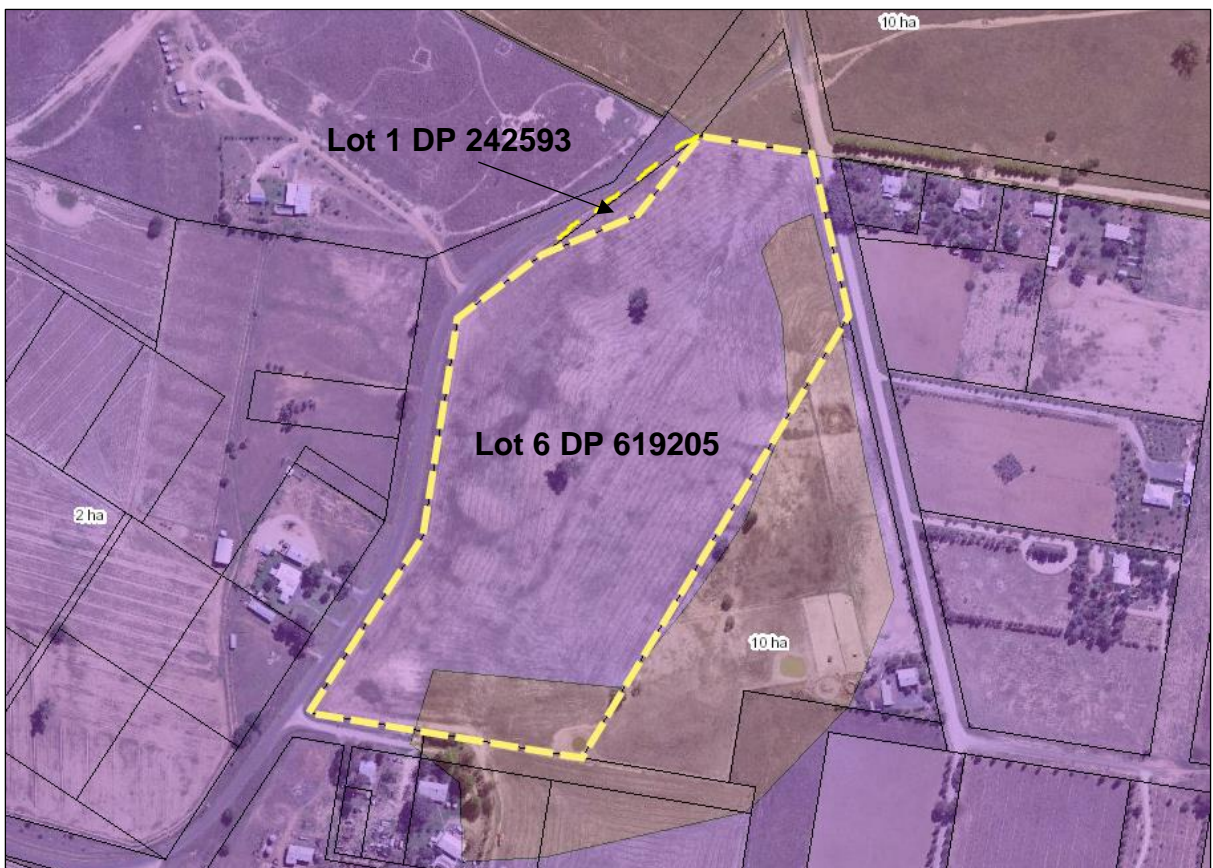


Figure 2: Lot boundaries and minimum lot size applying to the subject site.

1.3 Existing planning controls

The subject site is zoned R5 Large Lot Residential, and 'dwelling houses' are permitted with consent if the lot meets the MLS under clause 4.1(2) of the LEP. The subject site has a split MLS of 2ha and 10ha, based on flood risk as advised by Council. Comparison of the adopted flood mapping to MLS (**Figure 3**) shows the area of land with a 2ha MLS is within the low hazard flood storage area and the area of land with a 10ha MLS is within the high hazard flood storage area. Currently the subject land has a single dwelling entitlement. As the subject land has a split MLS, subdivision cannot be approved below the higher of the two MLS of 10ha.

Council advise that the existing flood planning controls can and will be used to ensure safe development occurs in the low hazard flood storage area of the land.

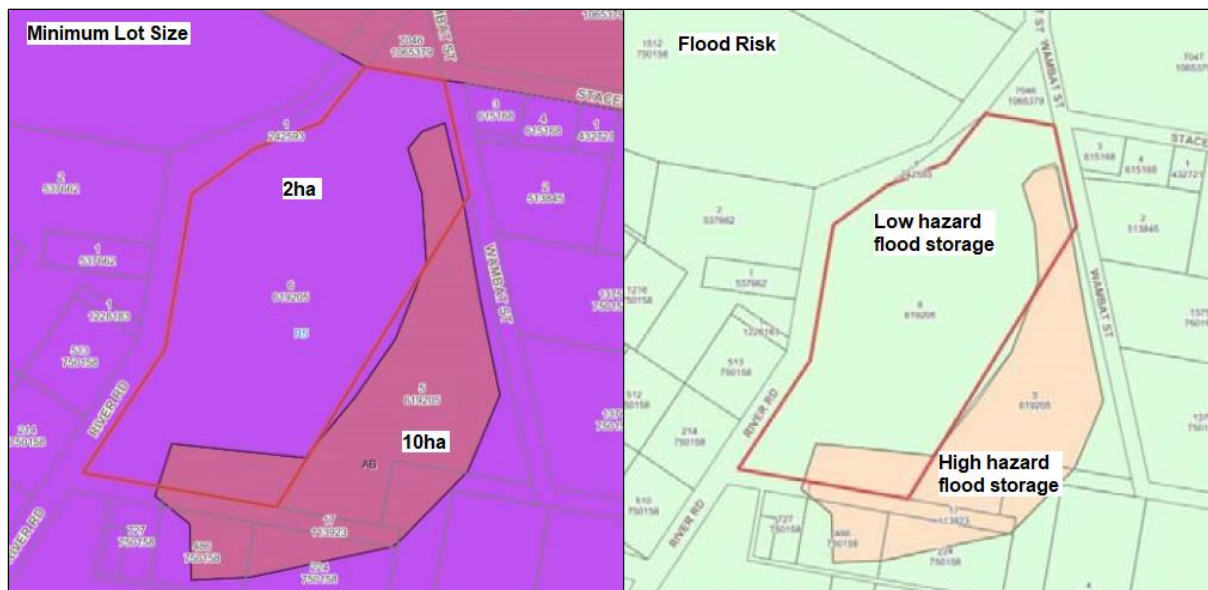


Figure 3: Comparison of MLS and flood risk mapping.

1.4 Summary of recommendation

Proceed with condition – The planning proposal will not increase development potential or flood risk of the subject site as it is already zoned and has a MLS to facilitate this development. The planning proposal is consistent with local and regional strategic planning and should proceed with conditions to update the planning proposal before community consultation.

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

2. PROPOSAL

2.1 Objectives or intended outcomes

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. The subject site is zoned R5 Large Lot Residential, and the objectives of this zone are to:

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

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

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

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

2.2 Explanation of provisions

The mechanism suggested to achieve the objective of the planning proposal is through a specific clause in Schedule 1, APU. The suggested wording of the APU clause in the planning proposal will:

- Consolidate Lot 6 DP 619205 and Lot 1 DP 242593.
- Ensure all resulting lots from the subdivision are 2ha, except for one lot which can be 1.9ha.
- Ensure the building envelope is at least 1000m² and located on each lot to allow for a future dwelling to be constructed as per the Forbes Development Control Plan (DCP) requirements.
- Ensure the building envelope is not located within the 10ha MLS (high hazard flood area) section of the lot.

For the planning proposal the suggested wording of the APU clause is too specific to be considered suitable for addition into Schedule 1 at Gateway stage. It is recommended that the planning proposal to be amended to remove the suggested APU clause and instead focus on the intent of the clause. The final clause will be drafted with Parliamentary Counsel. It is being recommended that the planning proposal to reflect the intent of the APU be amended before public consultation.

2.3 Mapping

The proposal does not suggest any amendments to LEP maps. It is required that the creation of a new APU will require the subject site to be identified on an APU map, through creation of APU_005 and APU_005AB map sheets.

3. NEED FOR THE PLANNING PROPOSAL

The planning proposal reasoning for this LEP amendment is to facilitate the practical subdivision of lots to 2ha with the intended use for residential purposes. The following options have been considered:

- Altering the MLS of the 10ha area to 2ha. This would result in the subject site having a MLS which is inconsistent with flood risk and MLS mapping across the rest of the LGA. Therefore this option is not supported.
- The use of an APU. Council staff and Councillors support this planning proposal with an APU as it is consistent with the intent of the LEP to allow subdivision of this land to 2ha. The planning proposal recommends controls to prevent houses being in the high hazard flood storage and adopting DCP flood protection controls. Council is of the opinion the subsequent development would not increase flood risks. This is the preferred option at this time.
- Another method to permit subdivision which has not been discussed in the planning proposal documentation is the creation of a Part 4 Principal Development Standard to address the issue. Creation of this clause could enable all land with a split MLS to use the smaller of the two MLS standards to subdivide in certain circumstances. There is a Standard Instrument model clause available to address this. This option was discussed with Council staff, however, it would require further broader strategic investigation to determine what land this would apply to and if there would be any unintended subdivisions if such a clause was adopted. Therefore to allow this proposal to proceed it can be supported with the APU as an interim method while Council undertakes the broader investigations.

Amending Schedule 1 of a LEP is generally considered not the best mechanism. However to enable the intent of this planning proposal to proceed is supported as the underlying intent of the current zone and the majority of the land has a 2ha MLS is to allow subdivision and dwelling houses. The APU mechanism has been used in other circumstances and at this time is the best mechanism to use in this case.

4. STRATEGIC ASSESSMENT

4.1 State

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

4.2 Regional / District

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

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

4.3 Local

The Department endorsed Forbes Growth Management Strategy 2009 (GMS) is relevant to the proposal. The Forbes GMS outlines the River Road precinct is suitable for rural residential purposes, including areas of low hazard flood storage in certain circumstances. The planning proposal is consistent with the Forbes GMS and intended housing density of 2ha for the River Road area.

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

4.4 Section 9.1 Ministerial Directions

Direction 2.1 Environmental Protection Zone

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

Direction 3.1 Residential Zones

This direction applies as the planning proposal affects land within a R5 Large Lot Residential zone. The planning proposal will enable the subject site to be developed to its full density potential of 2ha and erection of five dwellings connected to reticulated services can be constructed. The planning proposal is consistent with the objectives of this direction.

Direction 4.3 Flood Prone Land

This direction applies as the planning proposal affects flood prone land. The planning proposal is consistent with the objectives of the Floodplain Development Manual 2005 as outlined in section 4.1 of this report. The planning proposal will not alter LEP provisions relating to flood prone land as it will enable the existing MLS of 2ha to occur at the low hazard flood storage areas of the subject site. The proposal is

consistent with the objectives of this direction. The proposal is considered to be of minor significance as all the land is zone R5 with a MLS of 2ha.

Of note, the MLS and flood risk mapping are based off 2001 studies. Council have more recently completed flood risk mapping of the Shire in 2018, however, this is yet to be adopted. A comparison of the changes in flood risk between 2001 and 2018 (**Figure 4**) shows the flood risk has not substantially changed except for the northern half of the lot. The future proposed dwellings on the land can be located in the low hazard storage area in accordance with Councils flood planning controls.

Direction 5.10 Implementation of Regional Plans

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

The planning proposal does not consider this Direction and should be updated before public consultation.

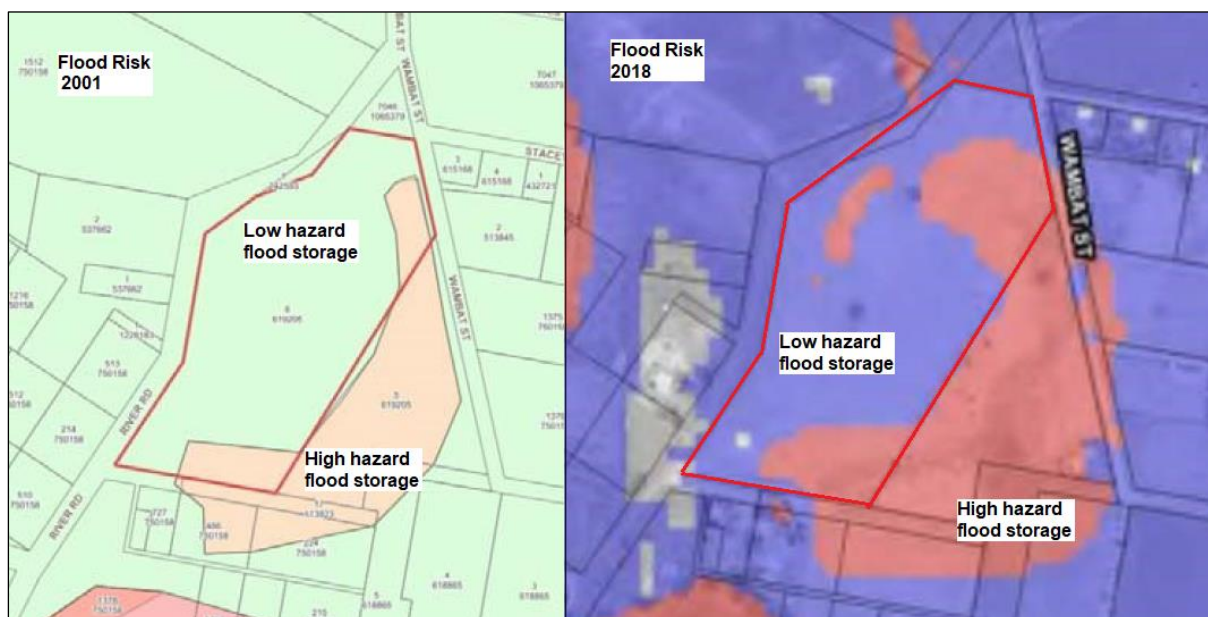


Figure 4: Comparison of 2001 and 2018 flood mapping of the subject site.

Direction 6.1 Approval and Referral Requirements

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

Direction 6.3 Site Specific Provisions

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

4.5 State environmental planning policies (SEPPs)

The planning proposal is consistent with the following SEPPs:

- State Environmental Planning Policy No 44—Koala Habitat Protection: The subject site is cleared of all vegetation except for isolated paddock trees which is unlikely to be core koala habitat.
- State Environmental Planning Policy No 55—Remediation of Land: Council advise the subject site has been historically used for agriculture however, site inspection did not find evidence of sheep dips or other potentially contaminating activities. As the proposal will not rezone land no additional investigation is required under this SEPP.

5. SITE-SPECIFIC ASSESSMENT

5.1 Social

Council considers facilitation of an additional five dwellings will have a positive social impact by allowing for additional residents to settle in Forbes.

5.2 Environmental

The subject site has been historically cleared for agriculture, except for remnant paddock trees. The subject site is also located on groundwater sensitive land. The proposal will allow for five new dwellings to be constructed on previously cleared land, which will be connected to reticulated water and sewage. Therefore, the proposal will facilitate development to meet the needs of the Forbes population, and by design, avoids and minimises environmental impact.

5.3 Economic

The subject site has access to all services and an existing road. Construction of five dwellings is unlikely to place an unreasonable burden on social or council services.

6. CONSULTATION

6.1 Community

Council has recommended a 28-day community consultation period for the planning proposal. The planning proposal is a low impact proposal as it is:

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

Therefore, it is recommended that a 14 day public exhibition period to occur.

6.2 Agencies

No agency consultation has been proposed by Council. Given the proposal will result in construction of five dwellings in a flood prone and groundwater sensitive area it is recommended for consultation with NSW State Emergency Service, and Biodiversity and Conservation Division (flooding) to occur as they may have interests in this proposal.

7. TIME FRAME

Council has proposed a four month time frame for completing the LEP. Given the Christmas period and time taken to draft a specific APU clause, it is considered a six (6) month timeframe is given to make the LEP.

8. LOCAL PLAN-MAKING AUTHORITY

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

9. CONCLUSION

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

- Will enable the intent of the LEP controls to subdivide R5 land to 2ha to occur.
- Is consistent with relevant local, regional and State strategic planning.
- Is not expected to exacerbate existing flood risk or significantly impact groundwater sensitive land.
- The majority of the land is zone R5 with a MLS of 2ha. The underlying intention of this zone is to allow this land to be subdivided for dwelling house purposes with Council consent.

10. RECOMMENDATION

That the Director, Western Region as delegate of the Secretary, agree that any inconsistency with section 9.1 Direction (6.3 Site Specific Provisions) is justified in accordance with the terms of the Direction.

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

1. The planning proposal should be revised before public exhibition to;
 - (a) Explain the intent of the Additional Permitted Use clause rather than recommend specific clause wording.
 - (b) Address the section 9.1 Ministerial Direction 5.10 Implementation of Regional Plans, and 6.3 Site Specific Provisions.
2. Public exhibition is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:
 - (a) the planning proposal is classified as low impact as described in *A guide to preparing local environmental plans* (Department of Planning, Industry and Environment 2018) and must be made publicly available for a minimum of **14 days**; and
 - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 6.5.2 of *A guide to preparing local environmental plans* (Department of Planning, Industry and Environment, 2018).

3. Consultation is required with the following public authorities/organisations under section 3.34(2)(d) of the Act and/or to comply with the requirements of relevant section 9.1 Directions:

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

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

4. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
5. The planning proposal authority is authorised as the local plan-making authority to exercise the functions under section 3.36(2) of the Act subject to the following:
- (a) the planning proposal authority has satisfied all the conditions of the Gateway determination;
 - (b) the planning proposal is consistent with section 9.1 Directions or the Secretary has agreed that any inconsistencies are justified; and
 - (c) there are no outstanding written objections from public authorities.
6. Prior to the submission of the planning proposal under section 3.36 of the Act, an Additional Permitted Use map must be prepared and be compliant with the Department's 'Standard Technical Requirements for Spatial Datasets and Maps' 2017.
7. The time frame for completing the LEP is to be **six (6) months** following the date of the Gateway determination.



10/10/2019

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