

**6.3 PLANNING PROPOSAL ASSESSMENT: ADDITIONAL PERMITTED
USE – LOT 6 DP 619205**

Report Author: Town Planner

Responsible Officer: Director of Planning & Growth

Background

Council has received a planning proposal to have an additional permitted use for the subdivision of Lot 6 DP 619205. Currently the land cannot be subdivided because it has a split minimum lot size, the vast majority being 2ha with a small portion being 10ha and it is a requirement that subdivisions meet all minimum lot sizes on the land. The proposal is to insert the following into Schedule 1: Additional Permitted Use:

The subdivision of areas mapped in Lot 6 DP 619205 as having a minimum lot area size of 10 hectares are permitted to form part of a subdivision of that land provided the following criteria is met:

- 1. Consolidation of Lot 6 DP 619205 and Lot 1 DP 242593, and***
- 2. Only 1 allotment may be less than 2 hectares in area provided it is not less than 1.9 hectares at minimum, and***
- 3. A building envelope with an area of not less than 1,000 square metres included with each allotment proposed as part of a development application seeking approval to subdivide can accommodate construction of a future dwelling in accordance with applicable planning controls relating to flooding and boundary setback(s)***
- 4. The entire area of each building envelope is to be positioned outside the area nominated as having a minimum lot area of 10 hectares.***

Analysis

The key objective of this planning proposal is to allow the subdivision of the subject land to five 2ha blocks. The vast majority of this land currently has a 2ha Minimum Lot Size, with a small portion being 10ha. The land is zoned R5 – Large Lot Residential with the objectives of this zone being:

1. To provide residential housing in a rural setting while preserving and minimizing impacts on environmentally sensitive locations and scenic quality.
2. To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.
3. To ensure that development in the area does not unreasonably increase the demand for public services of public facilities.
4. 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. 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 not currently possible to fulfil the zones primary objectives. This is because when land that has two more minimum lot sizes is subdivided, it must meet the objectives of the larger of the two lot sizes.

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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.

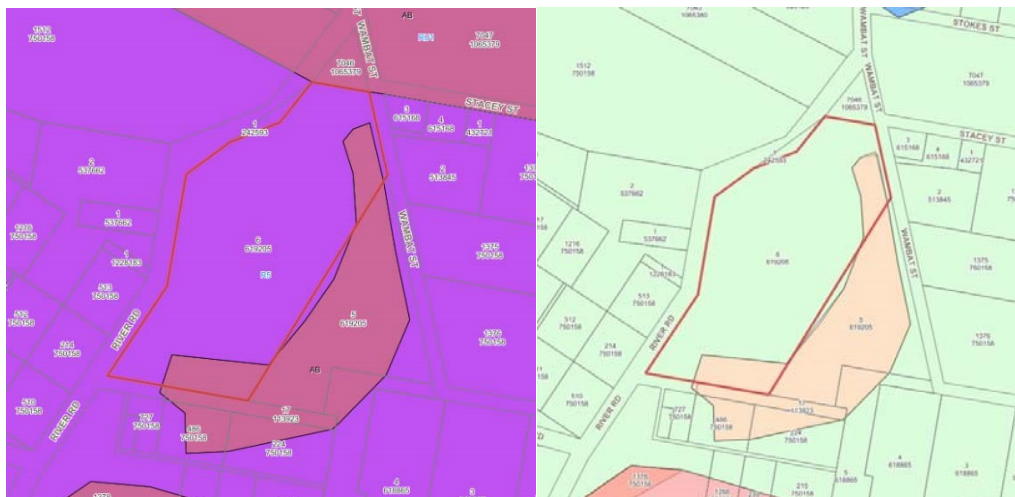
Why is there a split minimum lot size?

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 purpose of designating the High Hazard land as 10ha minimum lot size is to prevent residential development for safety purposes. The other aspect is 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 maintains largely the same flood liability of the subject land.

Minimum Lot Size

Flood Liability of Land (2001 study)



2018 Flood Study hydraulic hazard designation



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Options Explored

The options presented in this case are the following:

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

Do nothing

If the “Do Nothing” option was chosen, land zoned Large Lot Residential in close proximity to the CBD would be isolated. The land is not large enough for agricultural uses, and as such it would remain a non-productive vacant block while the land around it is expected to be developed with increasing density. There is a possibility for one dwelling to be put on the land, but this is seen as an inefficient use of a 10ha block in a desirable residential area of Forbes, and so close to the CBD.

Community Title Subdivision

One option considered was a Community Title Subdivision. This option would involve placing the 10ha lots of land in its own block as “Association Property” falling below the Minimum Lot Size as permissible in 4.1AA of the Forbes LEP. However, this would result in the land being defined as “association property” in theory only, with no real shared common use amongst all residents. Council does not see this as an appropriate way forward.

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 five 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 High Hazard Flood Storage 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 vast majority of the land as 2ha, it is interpreted by Council that the intent of the LEP was to allow subdivision of the land to 2ha lots. This planning proposal allows for the intent of the LEP to be fully realized, while protecting the high hazard land from future development.

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It is considered that this is the key strategic justification for the proposal – the LEP would allow the subdivision of this land if the small high hazard area was excluded from the lot. This proposal allows for the exclusion of this lot of land in practice by enshrining the requirement of a building envelope which excludes the High Hazard Flood Storage area.

This option also addresses the objectives of the 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 by allowing the subdivision of a 10ha lot which already has a minimum lot size of 2ha on 90% of the land to be subdivided for housing. It protects the environmentally sensitive land – being the High Hazard Flood Storage 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 River Road area 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.
To minimize conflict between land uses within this zone and land uses within adjoining zones.	This development is appropriate for the transition from General Residential to Rural land as it maintains a peri-urban outlook through having a 2 hectare minimum lot size.

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”

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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
Direction 1: Protect the region's diverse and productive agricultural land	The land is currently zoned R5 – Large Lot Residential and as such is not agricultural land and is not on the boundary of any agricultural land.
Direction 2-11	Unaffected
Direction 12: Plan for greater land use compatibility	As the land is designated Large Lot Residential, with the vast majority of land being 2ha Minimum Lot Size, this planning proposal allows the greatest use of the land. If this planning proposal were to not go ahead, it would remain largely a vacant block surrounded by smaller residential blocks. This would not be a compatible use.
Direction 13: Protect and Manage Environmental Assets	The proposal will not impact any environmental assets.
Direction 14: Manage and conserve water resources for the environment	The area of the land that development will be permitted on is Low Hazard Flood Storage. Dwellings are permissible in this section 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.
Direction 15: Increase resilience to natural hazards and climate change	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.
Direction 16: Respect and Protect Aboriginal Heritage assets	There is no known Aboriginal heritage on the site.

Ministerial Directions

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

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.

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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 the vast majority of the subject site is within the Low Hazard Flood Storage zone, with a small portion in the High Hazard Flood Storage.

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 Storage area. The 2018 Flood Study estimates that the Low Hazard land will have flood height of around 60 centimeters, with the connecting road being 20 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 Flood Plain 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 River Road area of the Forbes LGA 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, any subdivision will be subject to the extension of the Sewer main to service the blocks.

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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:

1. 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;
 2. The requirement of a building envelope minimizes the impact on flooding, justifying the variation to Ministerial Direction 4.3;
 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;
 4. It is interpreted that the intent of the 2013 LEP was to allow subdivision on this land, and thus the proposal has strategic merit; and
 5. It is the most appropriate use for the site, and allows the site to be used to its full potential.
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RECOMMENDATION

That Council:

1. Support the planning proposal to amend Schedule 1 of the Forbes Local Environment Plan 2013 to include:
 - i. the subdivision of areas mapped in Lot 6 DP 619205 as having a minimum lot area size of 10 hectares are permitted to form part of a subdivision of that land provided the following criteria is met;
 - ii. Consolidation of Lot 6 DP 619205 and Lot 1 DP 242593;
 - iii. Only 1 allotment may be less than 2 hectares in area provided it is not less than 1.9 hectares at minimum;
 - iv. A building envelope with an area of not less than 1,000 square metres included with each allotment proposed as part of a development application seeking approval to subdivide can accommodate construction of a future dwelling in accordance with applicable planning controls relating to flooding and boundary setback(s); and
 - v. The entire area of each building envelope is to be positioned outside the area nominated as having a minimum lot area of 10 hectares.
2. authorise the General Manager to lodge planning proposal to amend Schedule 1 of the Forbes Local Environment Plan 2013 with the Department of Planning and Environment requesting Gateway Determination in accordance with the requirements of Section 3.33 of the Environmental Planning and Assessment Act 1979; and
3. authorise the General Manager to place the planning proposal to amend Schedule 1 of the Forbes Local Environment Plan 2013 on public exhibition following the receipt of the Gateway Determination.

Alignment with Strategic Plan

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

Financial and Resource Implications

Nil.

Policy Implications

Nil.

Risk Considerations

Nil.

Statutory/Regulatory Implications

Nil.

Consultation conducted

Nil.

Attachments

Planning Proposal – Vision town Planning Consultants – refer Appendix 1