

5.5 PLANNING PROPOSAL - REQUEST TO AMEND INVERELL LOCAL ENVIRONMENTAL PLAN 2012 - 1 BURGESS STREET, INVERELL

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Author: Chris Faley, Development Services Coordinator

SUMMARY:

This report has been triggered by a request to Council to undertake a Planning Proposal to amend the *Inverell Local Environmental Plan 2012* in relation to 1 Burgess Street, Inverell. The Planning Proposal is seeking to permit a 'Centre-Based Child Care Facility' on 1 Burgess Street, Inverell as an 'Additional Permitted Use' under Schedule 1 of the *Inverell Local Environmental Plan 2012*.

It is recommended that the proposal be supported and that Council forward the Planning Proposal to the NSW Department of Planning and Environment requesting a Gateway determination in accordance with sections 3.33 and 3.34 of the *Environmental Planning and Assessment Act 1979*.

The Gateway determination is the first step in the process of amending the *Inverell Local Environmental Plan 2012*.

RECOMMENDATION:

That the Committee recommend to Council that:

- i. The Planning Proposal to amend the Inverell Local Environmental Plan 2012 to permit a 'centre-based child care facility' as an Additional Permitted Use on 1 Burgess Street, Inverell be forwarded to the NSW Department of Planning and Environment requesting a Gateway determination in accordance with sections 3.33 and 3.34 of the Environmental Planning and Assessment Act 1979;*
- ii. The Director Civil and Environmental Services be authorised to undertake the procedural steps associated with the progress of the Planning Proposal and obtaining the Gateway determination, including any minor amendments, information requests and public exhibition; and*
- iii. a further report be submitted in relation to this matter following public exhibition.*

COMMENTARY:**Introduction**

On 2 September, 2022, Council received a Planning Proposal from Inverell District Family Services Incorporated. The Planning Proposal seeks to amend the *Inverell Local Environmental Plan 2012* in relation to Lot 2 DP 818029, 1 Burgess Street, Inverell.

The proposal aims to facilitate a new child care centre on 1 Burgess Street, Inverell.

The Planning Proposal has been prepared in accordance with Section 3.33 of the *Environmental Planning and Assessment Act 1979* (EP&A Act 1979) and the *Local Environmental Plan Making Guideline* published by the Department of Planning and Environment. The Planning Proposal explains the intended effect of, and justification for the proposed amendment to the ILEP 2012. A copy of the Planning Proposal (**Attachment 1**) has been provided as a separate document. Owner's consent for the Planning Proposal is included as **Attachment 2**.

The aim of this report is to:

- Describe the site, the subject of this Planning Proposal;
- Provide a summary of the Planning Proposal;
- Outline the steps to amend a Local Environmental Plan;
- Explain the role of a Planning Proposal; and

- Provide discussion on the strategic merit of the amendment by Council's Development Services.

The Site

The land is known as Lot 2 DP 818029, 1 Burgess Street, Inverell. It has a total area of approximately 2.536 hectares and contains 'Best Tree Tenders' plant nursery, which comprises office/retail buildings, sheds, car park, greenhouses and plant growing/sales areas. Lot 2 DP 818029 also contains a telecommunications tower that was constructed in 2013 under DA-2/2013. An aerial image of the land is shown in **Figure 1**.

The existing car park is accessed via Burgess Street, which is the primary frontage for the subject land. Lot 2 DP 818029 has secondary frontage to, but no formal access from, Warialda Road. The road network can be seen in **Figure 1**.

The surrounding area is comprised of a mixture of commercial, light industrial, residential and infrastructure uses. Notable non-residential uses include:

- Service Station – 143-149 Warialda Road, Inverell;
- Commercial / light industrial complex – 108-110 Warialda Road, Inverell;
- Council water reservoirs – 3 Burgess Street; and
- Vacant land located on the corner of Jardine Road and Warialda Road – 60 Jardine Road, Inverell – This land was subject to a recent Planning Proposal to facilitate a Bunnings development.

Lot 2 DP 818029 is serviced by water, electricity, telecommunications and electricity. Council's water mains are located in Warialda Road and electricity powerlines are located through the site.

Request to Amend Inverell Local Environmental Plan 2012 – 1 Burgess Street, Inverell

Inverell District Family Services Incorporated propose to develop a new child care centre within part of 1 Burgess Street, Inverell. Concept plans of the proposed child care centre are included within the Planning Proposal.

The proposed child care centre is characterised as a "Centre-Based Child Care Facility" under the ILEP 2012.

Lot 2 DP 818029, 1 Burgess Street, Inverell is zoned RU1 Primary Production under the ILEP 2012. A "Centre-Based Child Care Facility" is prohibited within the RU1 Primary Production zone.

To facilitate a "Centre-Based Child Care Facility" on Lot 2 DP 818029, 1 Burgess Street, Inverell, Inverell District Family Services Incorporated are seeking the following site-specific amendment to the ILEP 2012:

*Insert within **Schedule 1 Additional Permitted Uses** the following:*

2 Use of certain land at Burgess Street, Inverell

- (1) *This clause applies to Lot 2, DP 818029, 1 Burgess Street, Inverell.*
- (2) *Development for the purposes of a centre-based child care facility is permitted with development consent.*

It is considered that a site specific Additional Permitted Use is an appropriate mechanism to permit a "Centre-Based Child Care Facility" on Lot 2 DP 818029 on the basis that:

- It is not considered appropriate to permit "Centre-Based Child Care Facility" within the entirety of the RU1 Primary Production zone;
- Given the existing 'Best Tree Tenders' nursery (commercial use) on the site, it is not appropriate to re-zone Lot 2 DP 818029 to a residential zone in which a "Centre-Based Child Care Facility" would be permissible; and
- It is not appropriate to re-zone Lot 2 DP 818029 to a business zone as:

- A business zone could not limit the permitted uses on Lot 2 DP 818029 to 'Best Tree Tenders' nursery and/or Centre-Based Child Care Facility'. Rather a business zone would result in a range of commercial uses being permitted on Lot 2 DP 818029, which may inadvertently cause fragmentation of the Inverell CBD; and
- Lot 2 DP 818029 does not form part of the strategic 'Enterprise Corridor' identified within the *Employment Lands Strategy 2011*.

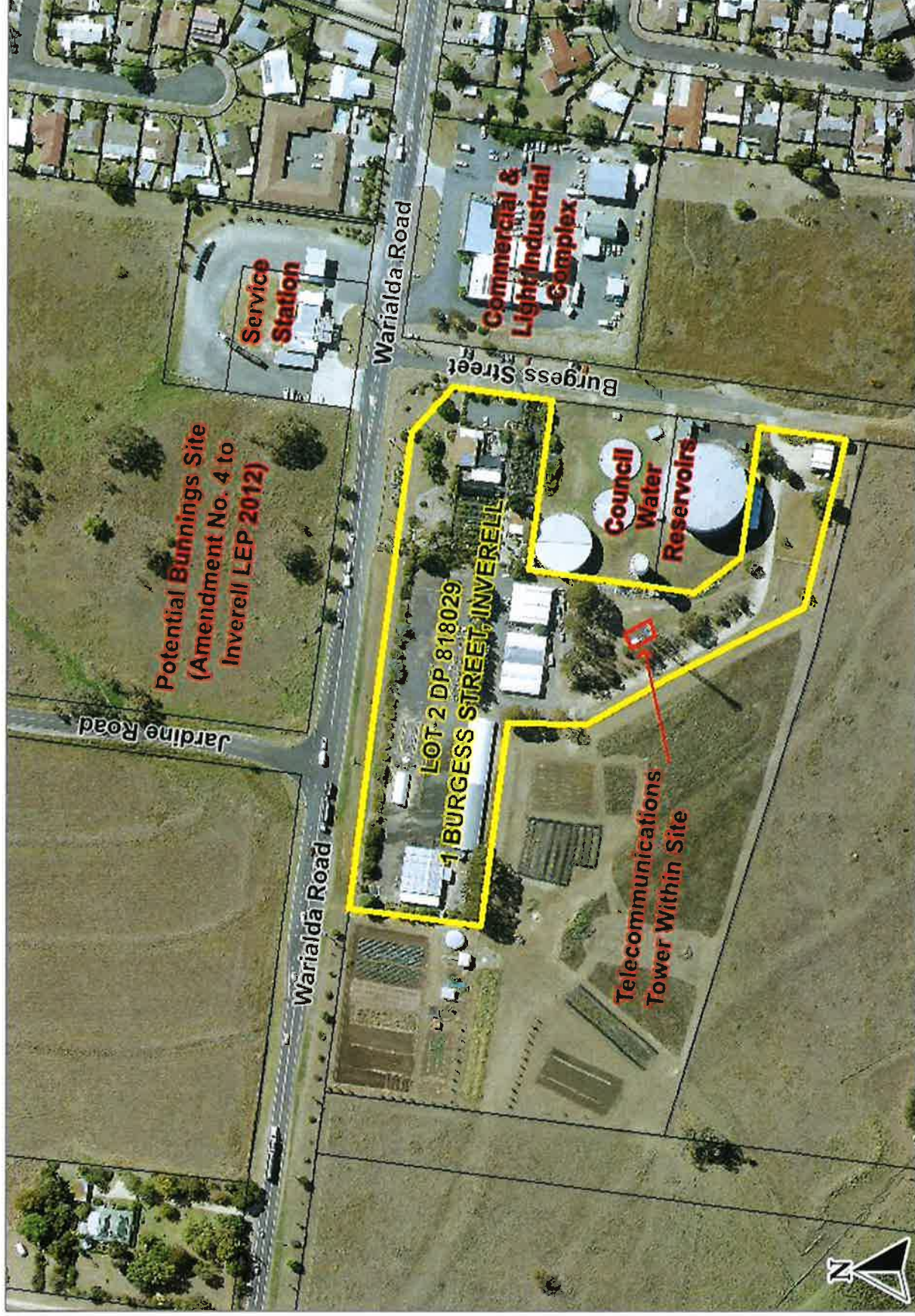


Figure 1 - Aerial Image of Lot 2 DP 818029 and surrounding area

What are the steps to Amend a Local Environmental Plan?

The following is an outline of the key steps to amend a Local Environmental Plan (LEP):

- The preparation of a Planning Proposal;
- The issuing of a Gateway determination;
- Community and other consultation on the Planning Proposal (as required);
- Finalising the Planning Proposal;
- Drafting of the LEP (legal instrument); and
- Notifying the LEP on the NSW government legislation website.

Based on the above, the Planning Proposal is the first step in the process and subject to the support and resolution of Council, the proposal can be forwarded to the NSW Department of Planning and Environment requesting a Gateway determination.

What is a Planning Proposal?

A Planning Proposal is a document that explains the intended effect and sets out the justification for amending a LEP. The preparation of a Planning Proposal is the first step in preparing and/or amending a LEP. The primary aim of a Planning Proposal is to demonstrate the strategic merit of a proposed LEP amendment.

The Planning Proposal document will be used and read by a wide audience including those who are responsible for deciding whether the proposal should progress, as well as government agencies and the general community.

A Planning Proposal which is submitted for a Gateway determination must provide enough information to determine whether there is sufficient strategic justification early in the process to proceed. It enables proposals that lack strategic planning merit to be stopped early in the process before time and resources are committed.

The level of detail required in a Planning Proposal should be proportionate to the complexity of the proposed amendment. A Planning Proposal relates only to an LEP amendment. It is not a Development Application nor does it consider specific detailed design, construction or environmental matters that should form part of a Development Application.

The EP&A Act 1979 does not dictate who must prepare a Planning Proposal. In practice, the Planning Proposal document can be prepared by a Council, a landowner or a developer seeking to change the planning controls relating to a particular site or locality. In this instance, the request to amend the ILEP 2012 has been generated by a developer (Inverell District Family Service Incorporated) and the Planning Proposal has been prepared by a third party (Keiley Hunter Town Planning) on behalf of the developer (Inverell District Family Service Incorporated).

Section 3.33(2) of the *EP&A Act 1979* outlines that a Planning Proposal must include the following components:

- **Part 1** – A statement of the objectives and intended outcomes of the proposed instrument;
- **Part 2** – An explanation of the provisions that are to be included in the proposed instrument;
- **Part 3** – The justification for those objectives, outcomes and the process for their implementation;
- **Part 4** – Maps, where relevant, to identify the intent of the planning proposal and the area to which it applies; and
- **Part 5** – Details of the community consultation that is to be undertaken on the planning proposal.

It is considered that the Planning Proposal (**attachment 1**) prepared by Keiley Hunter Town Planning on behalf of Inverell District Family Service Incorporated adequately addresses section 3.33(2) of the *Environmental Planning and Assessment Act 1979*.

Discussion on the Strategic Merit of the Amendment

Council's Development Services staff have undertaken a review of the request by Inverell District Family Services Incorporated to amend the ILEP 2012. This review has focused on the strategic merit of the Planning Proposal and its consistency with the strategic planning framework.

Subject to the proposed amendment to the ILEP 2012, the future development of the child care centre will be subject to the merit-based development application process, which would consider site specific issues, e.g. parking, building code compliance.

Inverell Local Strategic Planning Statement 2036

At the Ordinary Meeting of Council on 27 May 2020, the *Inverell Local Strategic Planning Statement 2036 (LSPS)* was adopted by Council (Resolution 2020/43).

It is the view of the Department of Planning and Environment, that the LSPS will inform future changes to development controls such as amendments to the ILEP 2012 and the *Inverell Development Control Plan 2013*.

Ten (10) planning priorities are identified within the LSPS, which take into consideration Council's vision, existing strategies, other policies and the direction of the community. Of relevance to the request from Inverell District Family Services Incorporated is Planning Priority 5 of the LSPS to "promote business and lifestyle opportunities". This Planning Priority acknowledges that:

"social infrastructure is the glue that holds the community together. It includes a broad range of facilities including schools and other education centres, child care centres, parks and recreation areas, community facilities, libraries, cultural centres and health facilities"

The request from Inverell District Family Services Incorporated to amend the ILEP 2012 is considered to be consistent with the *Inverell Local Strategic Planning Statement 2036*.

Inverell Living Lands Strategy 2009 and Living Lands Strategy Review 2011

The *Inverell Living Lands Strategy 2009* and *Living Lands Strategy Review 2011* informed the preparation and gazettal of the ILEP 2012. These strategies identified the western edge of Inverell as a future residential growth precinct. Specifically:

- A "New Residential Area", between Vernon Street and Jardine Road, was re-zoned from 1(d) Urban Investigation to R1 General Residential as part of the ILEP 2012; and
- The strategies identified approximately 190 hectares of land around Gwydir Highway, Jardine Road and Burgess Street as "Future Residential (Strategy only)". **Figure 2** shows the land identified as "Future Residential (Strategy only)".

At a strategic level, Lot 2 DP 818029 being located on the corner of Burgess Street and Jardine Road is considered a suitable location for a "Centre-Based Child Care Facility" to serve the identified residential growth precinct on the western edge of Inverell.

New England and North West Regional Plan 2036

The *New England North West Regional Plan 2036* is the State Government's 20-year blueprint for the future of the New England and North West region. The Regional Team of the Department of Planning and Environment are responsible for the actions associated with the regional plan; however, any rezoning and Planning Proposal must have consideration for this strategy.

Inverell is identified in the plan as a 'strategic centre' meaning that Inverell is seen as a major centre of regional strategic importance supporting the rural communities in that area. Direction 19 of regional plan is to "support healthy, safe, socially engaged and well-connected communities" and acknowledges that "all communities need access to social infrastructure, such as child care facilities and emergency accommodation".

It is considered that the proposed amendment to the ILEP 2012 is consistent with the actions contained within the *New England North West Regional Plan 2036*.

A draft updated *Regional Plan 2041* has also been prepared by the Department of Planning and Environment, but this has not been finalised at the date of this Planning Proposal.

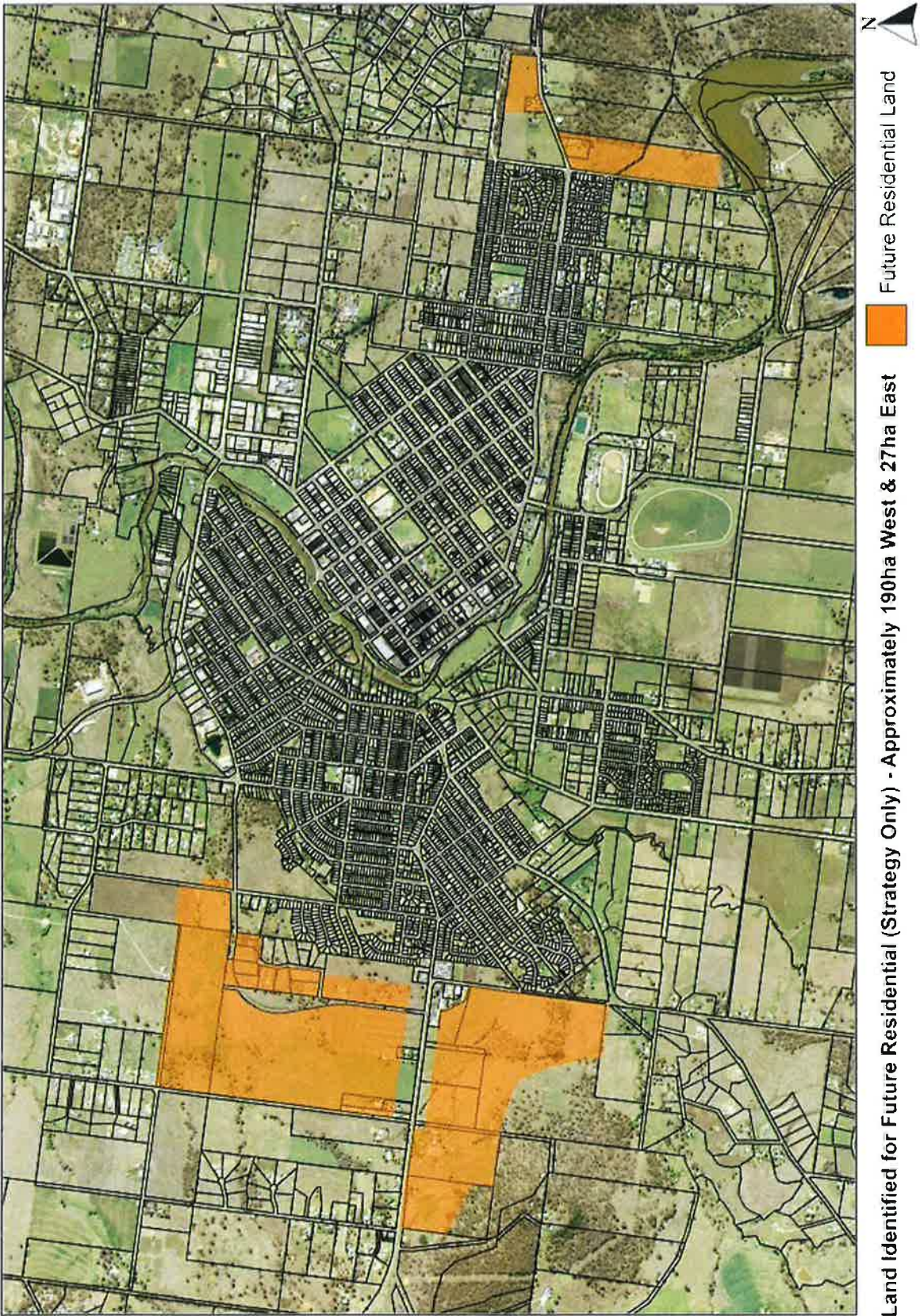


Figure 2

Section 9.1 Ministerial Directions

Ministerial Directions are issued under Section 9.1 of the *EP&A Act 1979* and must be addressed in a Planning Proposal to support a rezoning. The Ministerial Directions cover issues such as employment, environment and heritage, housing, infrastructure and urban development.

The Planning Proposal prepared by Keiley Hunter Town Planning on behalf of Inverell District Family Service Incorporated addresses the Section 9.1 Ministerial Directions relevant to the LEP amendment, which will be considered by the NSW Gateway Panel.

Should the Gateway Panel identify an inconsistency with a Ministerial Direction, it is standard practice to require additional information/studies (e.g. contamination assessment) and further consultation with the NSW Department of Planning, after a Gateway determination as been issued and prior to finalisation of a rezoning.

Conclusion

Council has received a request to amend the *Inverell Local Environmental Plan 2012*, to permit a 'Centre-Based Child Care Facility' on 1 Burgess Street, Inverell as an 'Additional Permitted Use' under Schedule 1 of the *Inverell Local Environmental Plan 2012*

It is considered that the Planning Proposal adequately addresses the requirements of Section 3.33(2) of the *Environmental Planning and Assessment Act 1979*. The proposed amendment is consistent with the *Inverell Local Strategic Planning Statement 2036* and *New England North West Regional Plan 2036*. The Planning Proposal addresses the relevant Section 9.1 Ministerial Direction and has sufficient strategic merit for submission to the NSW Department of Planning and Environment for a Gateway Determination.

Committee Members are requested to recommend to Council that the Planning Proposal be forwarded to the NSW Department of Planning and Environment requesting a Gateway determination in accordance with sections 3.33 and 3.34 of the *Environmental Planning and Assessment Act 1979*.

RISK ASSESSMENT:

Nil

POLICY IMPLICATIONS:

The planning proposal is consistent with the relevant strategic planning framework, including the *Inverell Local Strategic Planning Statement 2036* and the *New England and North West Regional Plan 2036*.

CHIEF FINANCIAL OFFICERS COMMENT:

Nil

LEGAL IMPLICATIONS:

The amendment to the *Inverell Local Environmental Plan 2012* will change the planning provisions for Lot 2 DP 818029, 1 Burgess Street, Inverell.

ATTACHMENTS:

1. **Planning Proposal prepared by Keiley Hunter Town Planning (Downloaded From Planning Portal) - 1 Burgess Street, Inverell - Additional Permitted Use - Centre Based Child Care Facility – IDFS** (provided as a separate document)
2. **Owner's Consent** 