



IRF 22/3442

## Gateway determination report – PP-2022-3147

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To identify a 'centre-based child care facility' as an additional permitted use with consent at 1 Burgess Street, Inverell (Lot 2 DP 818029) (8 jobs)

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# Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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**Table 1 Reports and plans supporting the proposal**

Relevant reports and plans
Planning Proposal Version 1: Pre-Lodgement 31/08/2022
Extract Civil and Environmental Services Committee Meeting Agenda and Meeting Minutes 14/09/2022

# 1 Planning proposal

## 1.1 Overview

**Table 2 Planning proposal details**

<b>LGA</b>	<b>Inverell Shire</b>
<b>PPA</b>	Inverell Shire Council
<b>NAME</b>	To identify a 'centre-based child care facility' as an additional permitted use with consent at 1 Burgess Street, Inverell (Lot 2 DP 818028) (8 jobs)
<b>NUMBER</b>	PP-2022-3147
<b>LEP TO BE AMENDED</b>	Inverell LEP 2012
<b>ADDRESS</b>	1 Burgess Street, Inverell
<b>DESCRIPTION</b>	Lot 2 DP 818028
<b>RECEIVED</b>	10/10/2022
<b>FILE NO.</b>	IRF22/3442
<b>POLITICAL DONATIONS</b>	There are no donations or gifts to disclose and a political donation disclosure is not required
<b>LOBBYIST CODE OF CONDUCT</b>	There have been no meetings or communications with registered lobbyists with respect to this proposal

## 1.2 Objectives of planning proposal

The planning proposal contains objectives and intended outcomes that adequately explain the intent of the proposal.

The objective of the planning proposal is to permit a 'centre-based child care facility' with consent at 1 Burgess Street, Inverell (Lot 2 DP 818028).

The objectives of this planning proposal are clear and adequate.

## 1.3 Explanation of provisions

The planning proposal seeks to amend Schedule 1 'Additional permitted uses' of the Inverell LEP 2012 to permit, with consent, development for the purpose of a centre-based child care facility on land at 1 Burgess Street, Inverell being Lot 2 DP 818028.

'Centre-based child care facility' is defined in the Inverell LEP 2012 as:

- (a) *a building or place used for the education and care of children that provides any one or more of the following –*
  - i. *long day care,*

- ii. *occasional child care,*
- iii. *out-of-school-hours care (including vacation care),*
- iv. *preschool care, or*
- (b) *an approved family day care venue (within the meaning of the Children (Education and Care Services) National Law (NSW))*

*but does not include -*

- (c) *a building or place used for home-based child care or school-based child care, or*
- (d) *an office of a family day care service (within the meanings of the Children (Education and Care Services) National Law (NSW)), or*
- (e) *a babysitting, playgroup or child-minding service that is organised informally by the parents of the children concerned, or*
- (f) *a child-minding service that is provided in connection with a recreational or commercial facility (such as a gymnasium) to care for children while the children's parents are using the facility, or*
- (g) *a service that is concerned primarily with providing lessons or coaching in, or providing for participation in, a cultural, recreational, religious or sporting activity, or providing private tutoring, or*
- (h) *a child-minding service that is provided by or in a health services facility, but only if the service is established, registered or licensed as part of the institution operating in the facility.*

Prior to community consultation, the planning proposal should be updated to:

- clarify that an amendment to the Additional Permitted Uses map is proposed;
- acknowledge that final drafting of the amendment will be determined by Legal Services Branch and Parliamentary Counsel at the legal drafting stage.

## 1.4 Site description and surrounding area

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. The existing car park is accessed via Burgess Street, which is the primary frontage for the subject land. The allotment has secondary frontage to, but no formal access from, Warialda Road (Gwydir Highway). The subject land also contains a telecommunications tower that was constructed in 2013 under DA-2/2013 (see Figure 1). Historic land uses include use by the Forestry Corporation.

Lot 2 DP 818029 is serviced by water, electricity, telecommunications and electricity. The site is not mapped as:

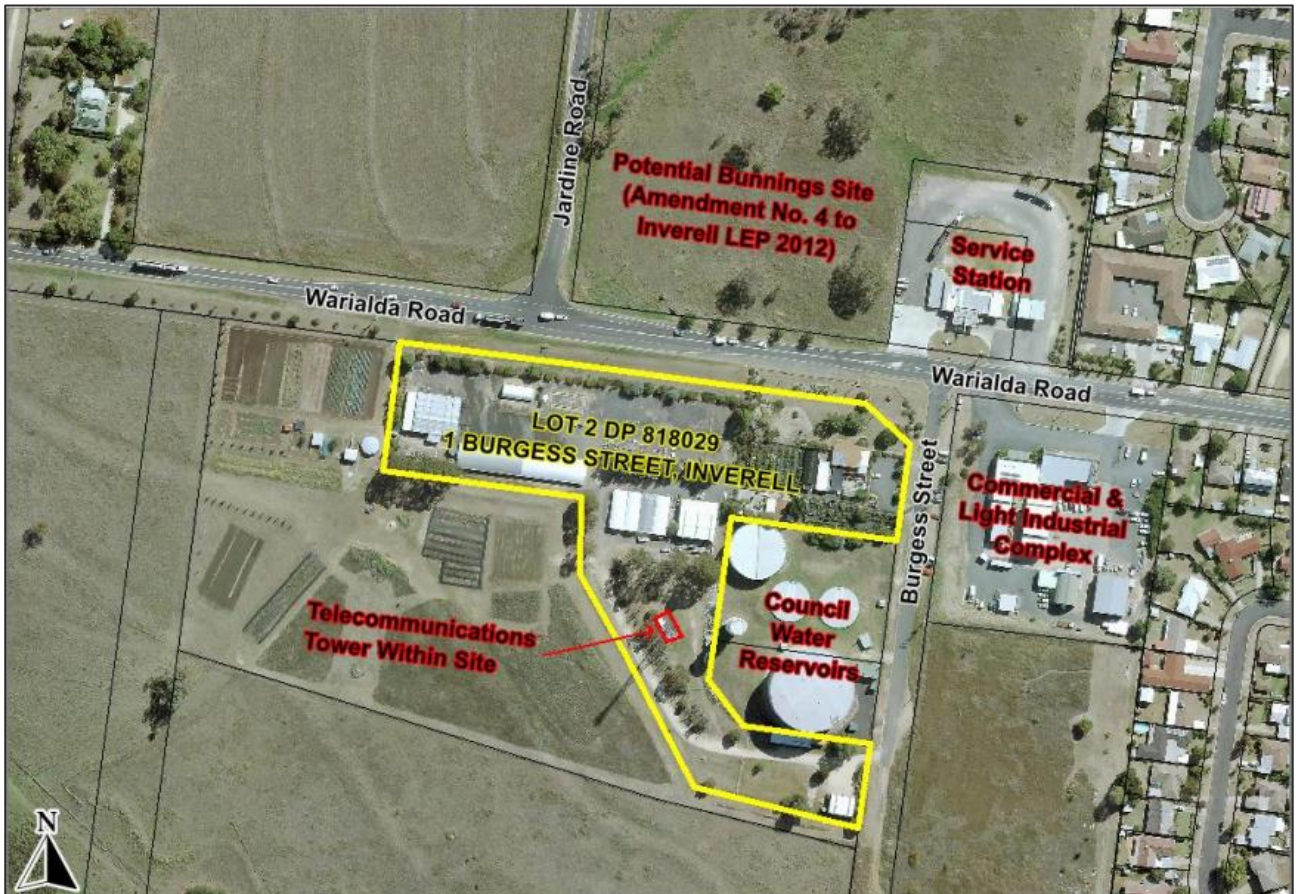
- being bushfire prone;
- being subject to inundation by flooding;
- containing biodiversity values or High Environmental Value (HEV) land;
- Biophysical Strategic Agricultural Land;
- containing items or places of non-Aboriginal or Aboriginal cultural heritage significance.

The allotment is located on the western periphery of Inverell and is zoned Zone RU1 Primary Production. The land is at the interface of zone RU1 Primary Production, zone R1 General Residential and zone B5 Business Development (see Figure 2).

The surrounding area is comprised of a mixture of commercial, light industrial, residential and infrastructure uses. Notable non-residential land 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 (PP\_2020\_INVER\_001\_00) to facilitate a Bunnings development.

The Minimum Lot Size map assigns the subject land a 450 square metre minimum lot size (Figure 3), reflecting the context and mixed-use nature of the allotment.



**Figure 1 - Aerial image of Lot 2 DP 818029 and surrounding area (Source: Civil and Environmental Services Committee Meeting Agenda 14 September 2022)**



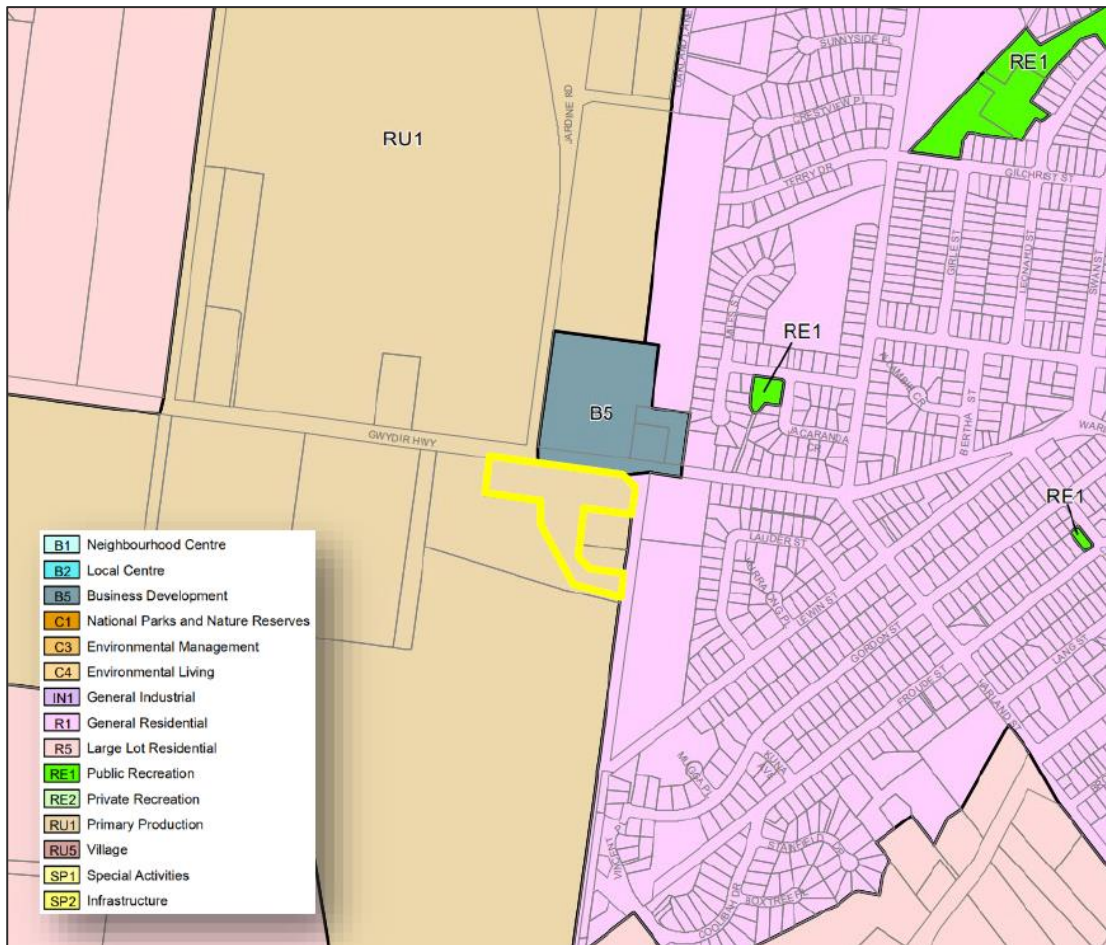


Figure 2 - Existing zoning map (Source: Planning Proposal)

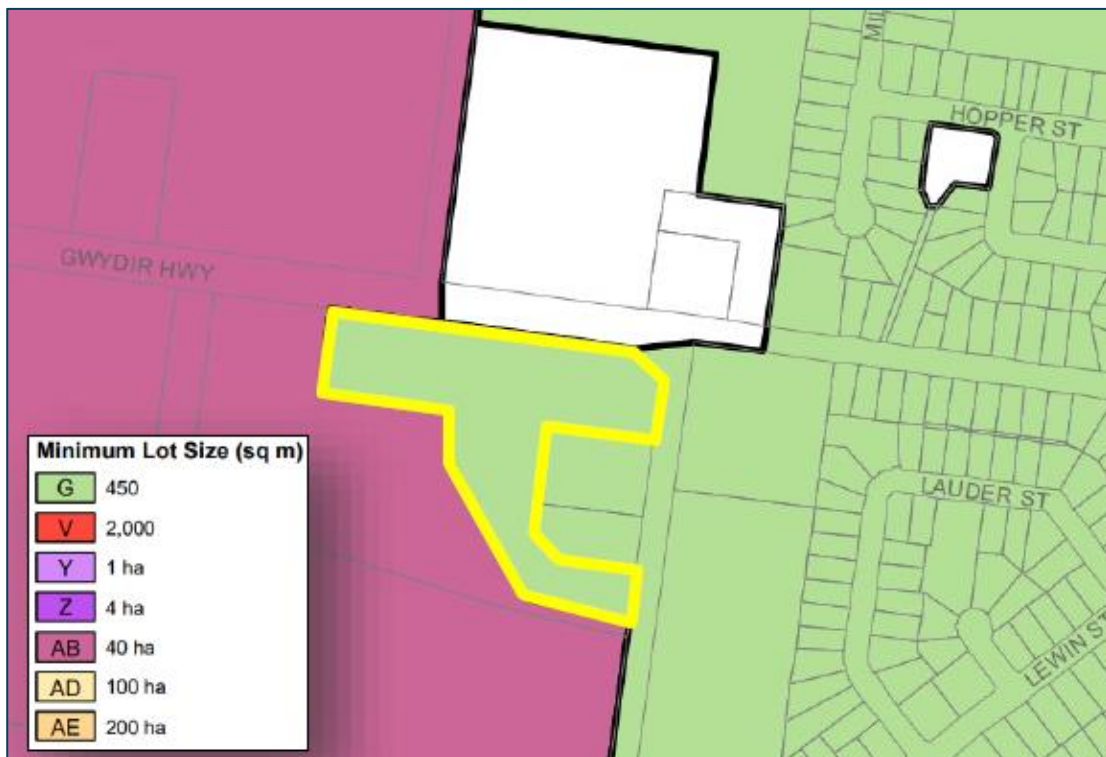


Figure 3 - Existing minimum lot size map (Source: Planning Proposal)

## 1.5 Mapping

The planning proposal will require an amendment to the relevant Inverell LEP 2012 Additional Permitted Uses map.

Prior to exhibition, the planning proposal is to be updated to:

- clarify that an amendment to the Additional Permitted Uses map is proposed; and
- include an indicative Additional Permitted Uses map detailing the proposed change.

Maps consistent with the Department of Planning and Environment's *Standard Technical Requirements for Spatial Datasets and Maps* will be required to be prepared prior to the plan being made.

## 2 Need for the planning proposal

The planning proposal is not a result of a Local Strategic Planning Statement, strategic study or report.

The planning proposal seeks to amend Schedule 1 'Additional permitted uses' of the Inverell LEP 2012 to permit, with consent, development for the purpose of a centre-based child care facility on land at 1 Burgess Street, Inverell being Lot 2 DP 818028.

The proposal to amend Schedule 1 of the Inverell LEP 2012 is considered to be the best approach to achieve the intended outcome on the basis that it is inappropriate to:

- permit 'centre-based child care facility' within the entirety of the RU1 Primary Production zone;
- re-zone Lot 2 DP 818029 to a residential zone in which a 'centre-based child care facility' would be permissible given the existing 'Best Tree Tenders' nursery (commercial use) on the site; and
- re-zone Lot 2 DP 818029 to a business zone as:
  - this would result in a range of commercial uses being permitted on the land, which may inadvertently cause fragmentation of the Inverell CBD; and
  - the allotment does not form part of the strategic 'Enterprise Corridor' identified within the Employment Lands Strategy 2011.

## 3 Strategic assessment

### 3.1 Regional Plan

The following table provides an assessment of the planning proposal against relevant aspects of the New England North West Regional Plan 2041. The proposal does not undermine the vision, objectives or strategies of the Regional Plan.

Prior to exhibition, the planning proposal is to be updated to provide an assessment against the recently released 2041 Plan.



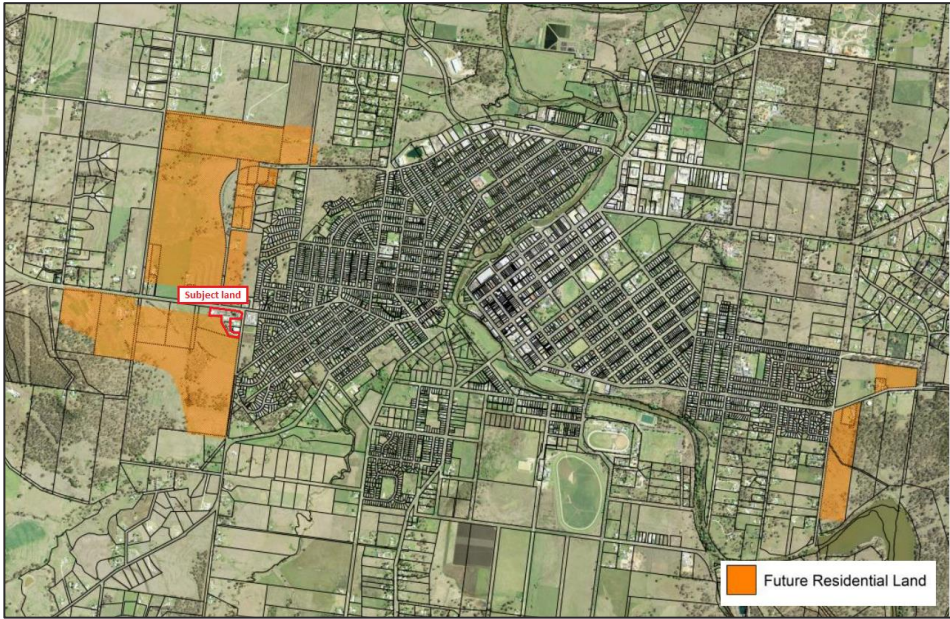
**Table 3 Regional Plan assessment**

Regional Plan Objectives	Justification
Part 2: Productive and innovative	<p><i>Objective 2: Protect the viability and integrity of rural land</i></p> <p>This aim of this objective is to ensure that rural land is principally planned and managed for agriculture with clear consideration of potential conflicts from new development.</p> <p>While the subject land is zoned RU1 Primary Production it is situated at the interface of zone RU1 Primary Production, zone R1 General Residential and zone B5 Business Development. It has a total size of approximately 2.536 hectares and accommodates an existing plant nursery and telecommunications facility. The allotment is subject to a 450m<sup>2</sup> minimum lot size and forms part of an isolated area of rural-zoned land that is, in part, strategically planned for future residential land and an enterprise corridor for large format type stores. The site is not mapped as Biophysical Strategic Agricultural Land or considered to be important agricultural land.</p> <p>Considering the above matters, the establishment of a centre-based child care facility on the site is not expected to result in land use conflict.</p> <p>Nevertheless, it is considered appropriate that consultation be undertaken with the Department of Primary Industries – Agriculture regarding the proposal.</p>
Part 4: Housing and place	<p><i>Objective 15: Understand, respect and integrate Aboriginal culture and heritage</i></p> <p>This objective acknowledges the Aboriginal cultural heritage present in the New England North West and aims to ensure that consultation processes on future land use planning acknowledges, respects and considers Aboriginal interests.</p> <p>It is considered appropriate that consultation be undertaken with the Anaiwan Local Aboriginal Land Council regarding the planning proposal.</p>
Local Government Narrative - Inverell	<p>This planning proposal aligns with the following council priority for the LGA:</p> <ul style="list-style-type: none"> <li>• support initiatives aimed at raising the profile of the area to attract younger people and business development.</li> </ul>

## 3.2 Local

The proposal states that it is consistent with the following local plans and endorsed strategies. It is also consistent with the strategic direction and objectives, as stated in the table below:

**Table 4 Local strategic planning assessment**

Local Strategies	Justification
Inverell Local Strategic Planning Statement 2036	<p>The Inverell Local Strategic Planning Statement (LSPS) was adopted by Council following consideration at the Ordinary Meeting on 27 May 2020. The proposal aligns with the following planning priority contained in the LSPS:</p> <p><i>Planning Priority 5: Promote business and lifestyle opportunities</i></p> <p>This planning priority notes that it is essential to ensure that the infrastructure and services needed to support economic development in the region is sustained. It is considered that the establishment of a centre-based child care facility will contribute to the social infrastructure of Inverell and ensure that adequate childcare services are available to meet the population's needs.</p> <p>The planning proposal is consistent with Action 5.2 of the LSPS – promote opportunities in the LEP and DCP for new and contemporary industry, ideas, skills and business practices to establish in the Shire.</p>
Inverell Strategic Land Use Plan 2011-2031	<p>The Inverell Strategic Land Use Plan 2011-2031 was endorsed by the Director General of the former Department of Planning and Infrastructure on 28 March 2012.</p> <p>The strategy identified approximately 190 hectares of land to the west of Inverell for future residential purposes (see Figure 3). The subject land is in proximity to this residential growth precinct and is therefore considered suitably located for the purpose of a centre-based child care facility.</p>  <p><b>Figure 4 - Land identified for future residential purposes (Inverell Strategic Land Use Plan 2011 - 2031) in relation to the subject land (Adapted from the Civil and Environmental Services Committee Meeting Agenda)</b></p>

Inverell Community  
Strategic Plan  
2009-2029

The proposal aligns with the Inverell Community Strategic Plan 2009 - 2029 as follows:

*Destination 2: A community that is healthy, educated and sustained*

- C.01: Facilitate the provision of a broad range of services and opportunities which aid the long-term sustainability of the community
- C.14 Provide opportunities for residents to gain employment
- C.15 Maintain and improve the social and physical wellbeing of individuals and communities
- C.16 Support the community to enable them to contribute to the economic, cultural and social wellbeing of the Shire

*Destination 4: A strong local economy*

- B.03 Facilitate access to services and infrastructure including education, training and research for business
- B.04 Develop and promote the Shire as the place for business establishment
- B.06 Plan for and promote private and commercial businesses and residential, industrial and commercial development
- B.07 Promote a competitive, dynamic and progressive business environment that improves market value

### 3.3 Section 9.1 Ministerial Directions

The planning proposal's consistency with relevant section 9.1 Directions is discussed below:

**Table 5 Section 9.1 Ministerial Direction assessment**

Directions	Consistent / Not Applicable	Reasons for Consistency or Inconsistency
1.1 Implementation of Regional Plans	Unresolved	<p>The objective of this direction is to give legal effect to the vision, land use strategy, goals, directions and actions contained in Regional Plans.</p> <p>Consistency with the Regional Plan is discussed in section 3.1 of this report. Consultation with the Department of Primary Industries – Agriculture and the Anaiwan Local Aboriginal Land Council will be required to ensure consistency with the New England North West Regional Plan 2041.</p> <p>As such, it is considered appropriate that consistency with this direction remain unresolved until consultation with these agencies has been undertaken.</p>
1.4 Site Specific Provisions	Consistent	<p>In accordance with the terms of this direction, the proposal allows the use of a 'centre-based child care facility' on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended.</p>

3.2 Heritage Conservation	Unresolved	<p>This direction states that a planning proposal must contain provisions that facilitate the conservation of heritage and Aboriginal cultural significance.</p> <p>While the planning proposal does not alter the existing heritage conservation measures on the subject land it is considered appropriate that consistency with this direction remain unresolved until consultation is undertaken with the Local Aboriginal Land Council.</p>
4.4 Remediation of Contaminated Land	Unresolved	<p>The objective of this direction is to reduce the risk of harm to human health and the environment by ensuring that contamination and remediation are considered by planning proposal authorities.</p> <p>Council has advised that there is insufficient information regarding the historic use of Lot 2 DP 818029 (agricultural (Forestry Corporation) / plant nursery activities) to determine whether the site is suitable for the proposed sensitive land use of a child care centre.</p> <p>In order to address the objectives of this direction, the planning proposal authority is to obtain and have regard to a report specifying the findings of a preliminary investigation of the land carried out in accordance with the <i>Contaminated Land Planning Guidelines</i>. A suitable condition has been included as part of the Gateway determination documentation in order to address this matter.</p>
9.1 Rural Zones	Consistent	<p>This direction states that a planning proposal must not rezone land from a rural zone to a residential, business, industrial, village or tourist zone.</p> <p>As the planning proposal does not incorporate the rezoning of land, consistency is achieved with this direction.</p>
9.2 Rural Lands	Unresolved	<p>This direction aims to (inter alia) protect the agricultural production value of rural land and facilitate the orderly and economic use and development of rural land for rural and related purposes.</p> <p>As the proposal will affect land within an existing rural zone the provisions of this direction apply.</p> <p>The planning proposal considers the natural and physical constraints of the land and states that the additional permitted use is considered appropriate due to:</p> <ul style="list-style-type: none"> <li>• the size of the subject land;</li> <li>• the proximity of the allotment to non-rural land uses and the town's water supply;</li> <li>• existing development on the site.</li> </ul> <p>Nevertheless, it is considered appropriate that consultation be undertaken with the Department of Primary Industries – Agriculture regarding the proposal.</p>

## 3.4 State environmental planning policies (SEPPs)

The planning proposal is considered to be consistent with all relevant SEPPs.

## 4 Site-specific assessment

### 4.1 Environmental

The following table provides an assessment of the potential environmental impacts associated with the proposal.

**Table 6 Environmental impact assessment**

Environmental Impact	Assessment
Environmental	<p>The proposal is not expected to impact any critical habitat or threatened species, populations or ecological communities, or their habitats.</p> <p>The subject land has been previously cleared and developed and does not contain or adjoin:</p> <ul style="list-style-type: none"> <li>land with high biodiversity value as shown on the Biodiversity Values Map;</li> <li>a heritage item or area listed under schedule 5 of the Inverell LEP 2012;</li> <li>known Aboriginal cultural heritage as per a basic search of the Aboriginal Heritage Information Management System; or</li> <li>a watercourse.</li> </ul>
Land use conflict	<p>While the subject site is zoned RU1 Primary Production the area surrounding the allotment comprises a mixture of commercial, light industrial, residential and infrastructure land uses. Establishment of a centre-based child care facility on the subject site is not expected to result in unreasonable land use conflict.</p>

### 4.2 Social and economic

The following table provides an assessment of the potential social and economic impacts associated with the proposal.

**Table 7 Social and economic impact assessment**

Social and Economic Impact	Assessment
Social	<p>The planning proposal offers the opportunity for the creation of additional social infrastructure. Centre-based child care facilitates are an integral service in supporting, retaining and attracting young families and an additional centre could potentially assist in arresting the negative outmigration trend currently being experienced in Inverell.</p>
Economic	<p>It is expected that the establishment of a centre-based child care facility will provide a positive economic contribution to the local economy via the creation of eight additional job opportunities.</p>



## 4.3 Infrastructure

The following table provides an assessment of the adequacy of infrastructure to service the site and the development resulting from the planning proposal and what infrastructure is proposed in support of the proposal.

**Table 8 Infrastructure assessment**

Infrastructure	Assessment
Traffic	<p>The allotment is located on the corner of Burgess Street and Warialda Road (Gwydir Highway). While the land has secondary frontage to a classified road, there is no existing, proposal or required access to this road. As such, consultation with Transport for NSW is not considered necessary in this instance.</p> <p>Should access be proposed to the classified road in the future, approval will be required in accordance with section 138 of the <i>Roads Act 1993</i>.</p>
State or regional infrastructure	There will be no impact on State or regional infrastructure or the requirement for additional funding.
Local infrastructure	The site is currently serviced by water, sewer, electricity, and telecommunications. Specific requirements for servicing are capable of being addressed at the development application stage.

## 5 Consultation

### 5.1 Community

Council proposes a community consultation period of 28 days.

The subject planning proposal is classified as 'standard' in accordance with the *Local Environmental Plan Making Guideline* (Department of Planning and Environment, 2021). As such, the proposed consultation period of 20 working days is considered appropriate, and forms a condition of the Gateway determination.

### 5.2 Agencies

The proposal does not specifically raise which agencies will be consulted.

It is recommended the following agencies be consulted on the planning proposal and given 30 days to comment:

- NSW Department of Primary Industries – Agriculture
- Anaiwan Local Aboriginal Land Council

## 6 Timeframe

Council proposes a 6 month time frame to complete the LEP.

The Department recommends a time frame of 9 months to allow sufficient time for consultation and to ensure it is completed in line with its commitment to reduce processing times.

A condition to the above effect is recommended in the Gateway determination.

## 7 Local plan-making authority

Council has advised that it would like to exercise its functions as a Local Plan-Making authority.

As the applicant of the planning proposal is a Councillor with Inverell Shire Council, the Department recommends that Council not be authorised to be the local plan-making authority for this proposal.

## 8 Assessment summary

The planning proposal is supported to proceed with conditions for the following reasons:

- the proposal is generally consistent with local and regional strategic planning policies;
- the proposal is expected to provide positive economic benefits with minimal environmental impacts; and
- any site specific issues can be adequately considered and managed at the development application stage.

Based on the assessment outlined in this report, the proposal must be updated before consultation to:

- clarify that an amendment to the Additional Permitted Uses map is proposed;
- include an indicative Additional Permitted Uses map detailing the proposed change;
- acknowledge that final drafting of the amendment will be determined by Legal Services Branch and Parliamentary Counsel at the legal drafting stage;
- include an assessment against the New England North West Regional Plan 2041;
- consider the recommendations of a report specifying the findings of a preliminary investigation of the land carried out in accordance with the *Contaminated Land Planning Guidelines*.

## 9 Recommendation

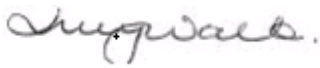
It is recommended the delegate of the Secretary:

- Note that the consistency with section 9.1 Directions 1.1 Implementation of Regional Plans, 3.2 Heritage Conservation, 4.4 Remediation of Contaminated Land and 9.2 Rural Lands is unresolved and will require justification.

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

1. Prior to community consultation, the planning proposal is to be updated to:
  - clarify that an amendment to the Additional Permitted Uses map is proposed;
  - include an indicative Additional Permitted Uses map detailing the proposed change;
  - acknowledge that final drafting of the amendment will be determined by Legal Services Branch and Parliamentary Counsel at the legal drafting stage;
  - include an assessment against the New England North West Regional Plan 2041;

- consider the recommendations of a report specifying the findings of a preliminary investigation of the land carried out in accordance with the *Contaminated Land Planning Guidelines*.
2. Consultation is required with the following public authorities:
    - NSW Department of Primary Industries – Agriculture
    - Anaiwan Local Aboriginal Land Council
  3. The planning proposal should be made available for community consultation for a minimum of 20 working days.
  4. The timeframe for completing the LEP is to be 9 months from the date of the Gateway determination.
  5. Given the nature of the proposal, Council should not be authorised to be the local plan-making authority.



27/10/2022

\_\_\_\_\_  
(Signature)\_\_\_\_\_  
(Date)

Lucy Walker  
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28/10/2022

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