

**20.7 LOWER BATHURST STREET PLANNING PROPOSAL****REPORT AUTHOR: Manager Development and Planning****RESPONSIBLE OFFICER: Director Planning and Growth**

---

**EXECUTIVE SUMMARY**

The Lower Bathurst Street Area is a deferred area of the *Forbes Local Environmental Plan 2013*. This means that it was never brought into the new “standard instrument” of the 2013 LEP, and instead is still governed by the *Forbes Local Environmental Plan 1986*. This is a significantly outdated instrument, approaching over 40 years old, and is now causing issues for residents in achieving development consent for their applications as they have to comply with the 1986 instrument.

This report proposes to bring this area into the *Forbes Local Environmental Plan 2013*. The proposal does not propose any changes to the development controls that apply to the land, and simply proposes to:

1. change the land zoning from 1a Rural to RU1 Primary Production (relative zone)
2. maintain the minimum lot size of 40 hectares; and
3. repeal the *Forbes Local Environmental Plan 1986*.

**DETAILED REPORT**

In the *Forbes Local Environmental Plan 2013*, the area east of the railway line (dubbed “Lower Bathurst Street Area”) is a “Deferred Area”. This means that it was never adopted as part of the *Forbes Local Environmental Plan 2013*.

During the standardisation of Local Environmental Plans, Deferred Areas were used by the Department of Planning where an agreement could not be reached between a council and the Department on the appropriate zoning of land. For the Forbes LEP, the Department of Planning and Environment were concerned about the flood risk of this area.

In 2017 Council lodged a Planning Proposal in accordance with the following resolution from Council:

1. *Endorse the change to the minimum lot size and change of zoning from 1(a) Rural Zone, to R5 – Large Lot Residential with a minimum lot size of 2 hectares when connected to Council sewer, and 10 hectares where onsite disposal is occurring, for land east of the Rail Line and west of Cargo Lane, the Unnamed Road, Lot 789, and Lot 975 DP750158, and Lot 7 DP113923, the Escort Way, Forbes;*
2. *Rezone the balance of the land to RU1 - Primary Production, with a minimum Lot size of 40 hectares for the construction of a dwelling; and iii). prepare a Planning Proposal reflecting the above and authorise the General Manager to send the Planning Proposal to the Department of Planning for Gateway Determination.*

All owners in the area, except the three land owners of the land listed in point 1, did not support rezoning the land to residential. At the time, this resolution was seen as a balance between the competing priorities and interests of residents in the Lower Bathurst Street Area.

This Planning Proposal did not achieve Gateway Determination, and the Department of Planning requested that Council finish the flood study, that had commenced in 2016, prior to continuing with the Planning Proposal. The Flood Study was adopted in 2020 and designated the majority of the Lower Bathurst Street Area as either *High Hazard Floodway* or *High Hazard Flood Storage*. During the public exhibition of the Flood Study, Council received 14 submissions; 12 of these submissions

were from residents of Lower Bathurst Street writing in support of the designation of this land as High Hazard.

In 2021, the Department adopted new Ministerial Directions which states that flood liable land designated as *High Hazard* must not be rezoned to increase the density of dwellings in the area. As the majority of the subject land is designated as *High Hazard Flood Storage*, the Department of Planning and Environment will not support intensification of dwellings on this site.

The Draft Forbes Housing Strategy recommends the following:

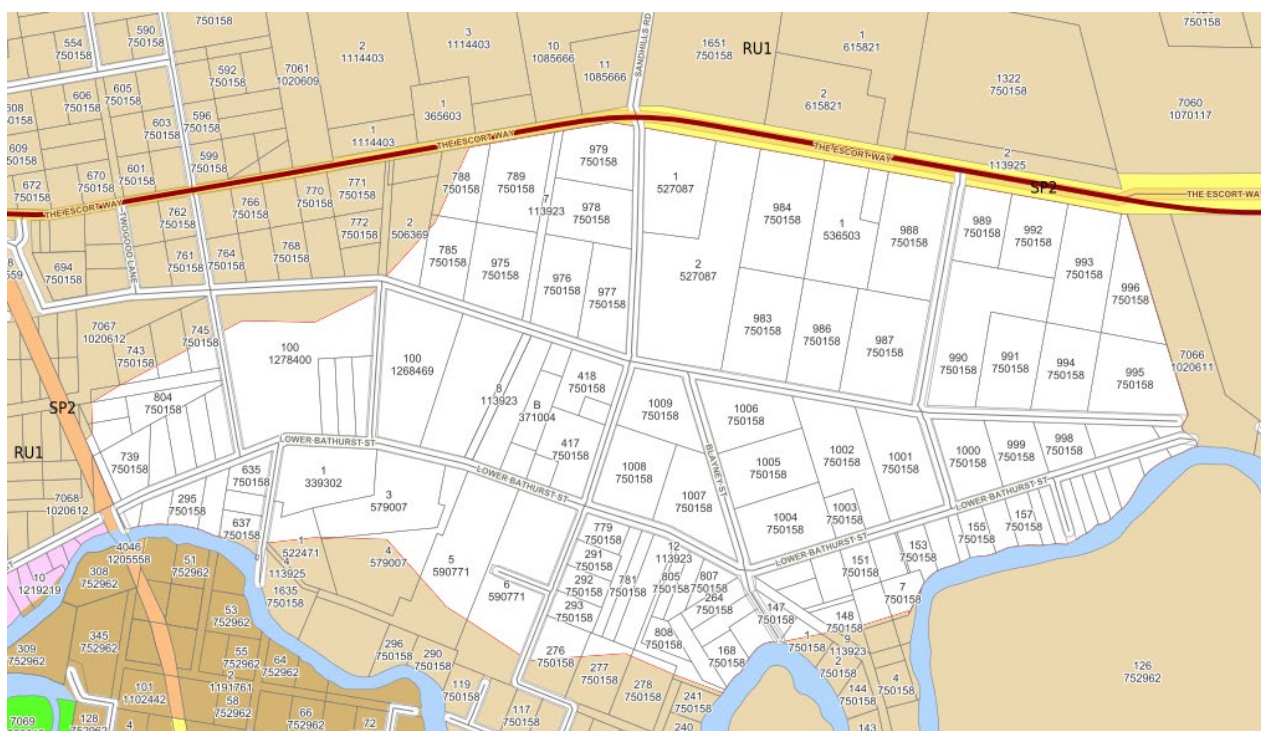
*“Return the existing unzoned area of land on the eastern fringe of the Township to primary production. This area has been considered for a R5 Large Lot Residential zoning, however the land is constrained by flooding. In addition, there are other areas of suitably zoned land that are better placed to continue to meet the market demand for rural residential housing”.*

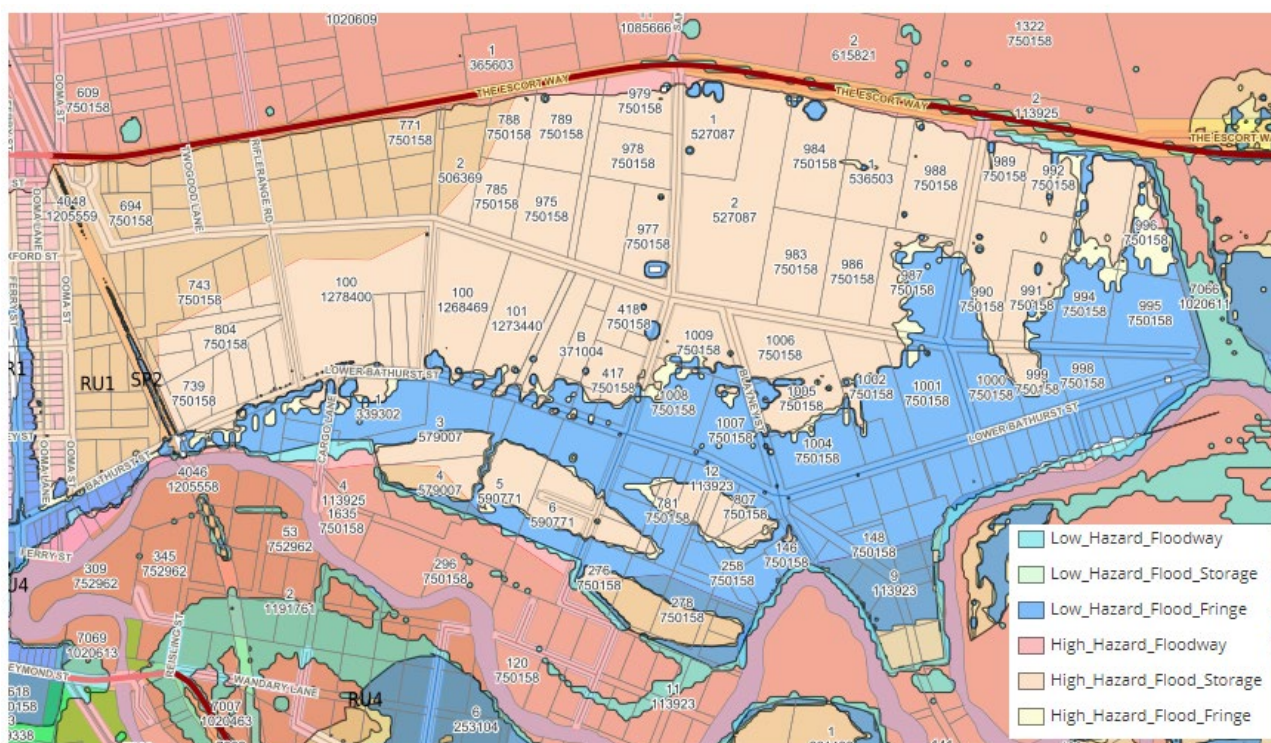
In the 2022 flood events, the Lower Bathurst Street Area experienced significant levels of flooding, with a number of houses inundated and properties severely impacted.

Further, having the 1986 *Local Environmental Plan* still in effect causes consistency issues. Two separate Local Environmental Plans applying to Forbes means that different community members have entirely different planning schemes applying to them, which causes confusion and inconsistency amongst the community. It also makes development difficult for residents.

The planning proposal proposes to bring the land into the *Forbes Local Environmental Plan 2013 (FLEP 2013)*, with a zoning of RU1 Primary Production, a minimum lot size of 40ha and a height of building of 10m. This in effect results in no change to development controls, and simply changes the land zoning from 1a Rural to its equivalent, RU1 Primary Production in the current Local Environmental Plan. This does not create any more possibilities for dwellings as the current minimum lot size of the land is 40ha in accordance with the *Forbes Local Environmental Plan 1986 (FLEP 1986)*. This Planning Proposal will repeal the FLEP 1986.

The white area in the below image shows the land subject to the planning proposal.





*Flood categorisation – Forbes Flood Study 2020*

There are some areas within the precinct which are *Low Hazard Flood Fringe*. However, these areas are to the western portion of the precinct, further away from the urban area of Forbes. Should it be proposed that these low hazard areas have different zones, it would create disjointed development controls that would be difficult to manage and not allow the logical growth of Forbes' urban area. Further, Council has previously undertaken consultation of this area as part of the *Forbes Flood Study 2020* which showed general opposition to more dwellings being built in the area as the land was being used for more traditional river from intensive plant agriculture. It would therefore not be in the public interest to support further intensification in this area.

Council has sought pre-lodgement advice from the Department of Planning and Environment on whether they would consider the original proposal to rezone part of the land as R5 Large Lot Residential, or even if they would consider a smaller minimum lot size than 40ha. They indicated that this is very unlikely to be supported because of the flood categorisation.

Therefore, to bring the Lower Bathurst Street Area in line with the Standard Instrument and standardise development controls across the Shire, it is recommended that Council progress with a Planning Proposal to transition the area with like-for-like controls into the *Forbes LEP 2013*.

---

**RECOMMENDATION**

That Council:

1. endorse the Lower Bathurst Street Area Planning Proposal for referral to the Department of Planning and Environment for Gateway Determination;
  2. delegate the General Manager to make changes to the Planning Proposal if required by the Department of Planning and Environment so long as the objectives of the proposal are achieved; and
  3. delegate the General Manager to commence public exhibition of the Planning Proposal if required by the Department of Planning and Environment.
- 

**ATTACHMENTS**

1. Lower Bathurst Street Proposal

**KEY IMPLICATIONS AND CONSIDERATIONS****Financial Implications**

NIL

**Political and Governance Implications (including risk, policy and legislation)**

NIL

**Link to Community Strategic Plan**

**RU2 Develop appropriate landuse planning measures that facilitate diversity and choice in housing and in rural and urban living**