



IRF 23/1163

Gateway determination report – PP-2023-868

Deferred Matter – Lower Bathurst Street, Forbes

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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
Council Resolution and Report dated 20/04/2023

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Forbes LGA
PPA	Forbes Shire Council
NAME	Lower Bathurst Street
NUMBER	PP-2023-868
LEP TO BE AMENDED	Forbes Local Environmental Plan 1986
ADDRESS	Lower Bathurst Street
DESCRIPTION	Refer to area in White in Figure 1
RECEIVED	27/04/2023
FILE NO.	IRF23/1163
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal
MAP ONLY/PCO ONLY/PCO & MAPS	PCO & MAPS REPEAL OF FORBES LOCAL ENVIRONMENTAL PLAN 1986

1.2 Objectives of planning proposal

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

The objectives of the planning proposal are to:

- Allow for the logical use of land given consideration of the natural constraints of being flood liable land.
- Bring consistency in the Forbes Local Government Area (LGA) by applying one Local Environmental Plan (LEP) i.e. Forbes LEP 2013.

The objectives of this planning proposal are clear and adequate.

1.3 Explanation of provisions

The planning proposal seeks to repeal the Forbes LEP 1986 and make provisions for the subject land in the Forbes LEP 2013 as per the changes below:

Table 3 Current and proposed controls

Control	Current	Proposed
Zone	1(a) (Rural Zone)	RU1 Primary Production
Maximum height of the building	10m	10m
Minimum lot size	40ha	40ha

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved.

The current zone is an “open zone” that permits a range of uses with Council consent. The proposed RU1 zone is a “closed” zone that will be more restrictive in terms of permissible land use.

In terms of dwelling house permissibility, the status quo will be maintained and not allow intensification for dwelling house purposes having regard to the nature of flooding in this area. Council considered the proposed zoning as the best option to achieve this. Adopting the standard instrument zone RU1 Primary Production may result in some current land uses relying on existing use provisions and each landowner in this area should be individually notified of the proposed change.

1.4 Site description and surrounding area

The site is located approximately 12 kilometres or 15 minutes east of the Forbes CBD (Refer to Figure 1 below). The site is predominately cleared grazing land with several lots containing rural dwellings.

During the making of the Forbes LEP 2013 Council had not resolved the intended standard instrument zoning for the subject land. Accordingly, the area was identified as a deferred matter in the Forbes LEP 2013.

A flood study considering the Lower Bathurst Street area was adopted by Council in 2020. The flood study identifies the site as high hazard flood liable land. The area also experienced a major flooding event in November 2022. In consideration of this, Council has resolved for the site to be zoned RU1 Primary Production and maintaining the minimum lot size of 40ha allowing for the repeal of the Forbes LEP 1986.

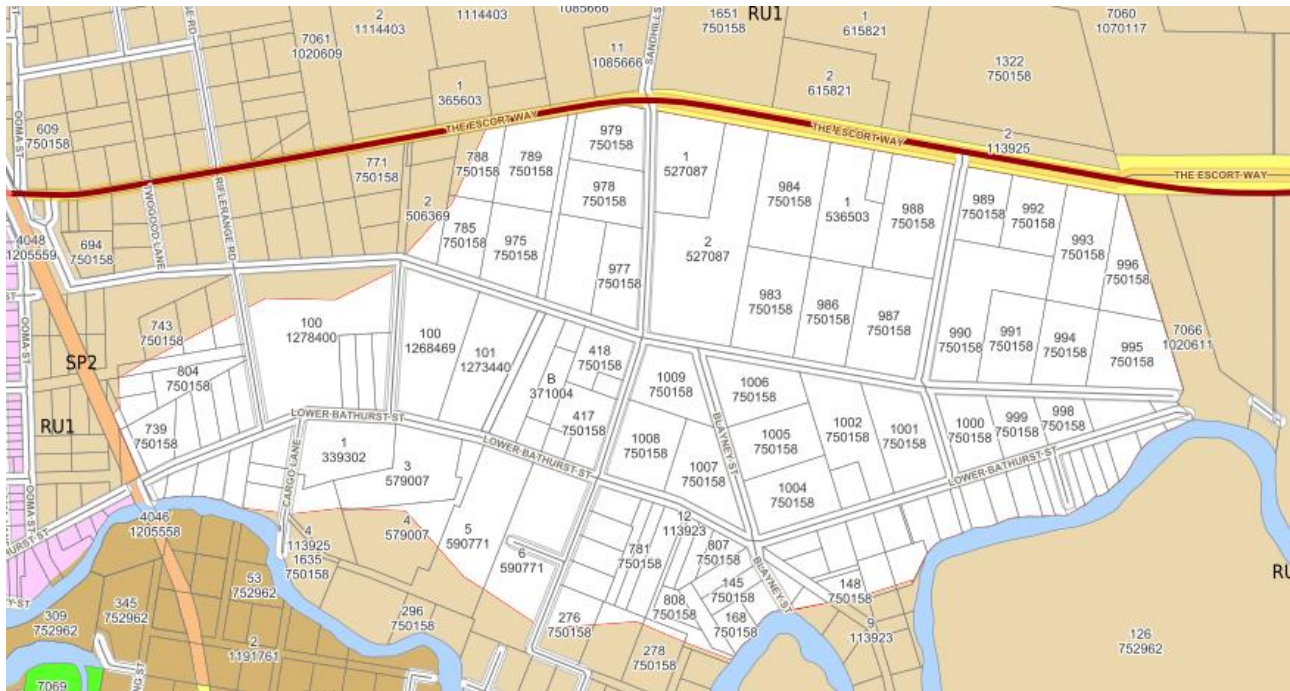


Figure 1 Subject site (source: E Noakes, Lower Bathurst Street Planning)

1.5 Mapping

The planning proposal includes a map showing the site subject to the planning proposal. Prior to community consultation the planning proposal is to be updated to include additional mapping showing the proposed changes to the land zoning, minimum lot size controls and flood planning map. The Forbes LEP 2013 Height of Buildings Map Sheets HOB_005AB and HOB_005CB currently indicate the proposed 10m height of building provision for the subject land. Accordingly, no change to the Height of Buildings Maps will be required. Council intends to only update the flood planning map for the deferred area in this planning proposal and will update the flood planning maps for the rest of the LGA in a future planning proposal.

The following maps are to be amended by this proposal:

- Forbes LEP 2013
 - o Land Application Map Sheet LAP_001
 - o Lot Size Map Sheet LSZ_005AB
 - o Lot Size Map Sheet LSZ_005CB
 - o Land Zoning Map Sheet LZN_005AB
 - o Land Zoning Map Sheet LZN_005CB
 - o Flood Planning Map - Sheet FLD_005CB
- Forbes LEP 1986
 - o All maps to be repealed

1.6 Background

The site is referred to as a deferred matter, identified on the Forbes LEP 2013 Land Application Map. The Forbes LEP 1986 applies to the land. Due to the site constraints (flooding), Council has

resolved to maintain the rural land use and zone the land RU1 Primary Production under the Forbes LEP 2013. Council considers that this zone is the best fit to change the land to an equivalent Standard Instrument zone. The proposal will allow for the repeal of Forbes LEP 1986.

2 Need for the planning proposal

The planning proposal is supported by the Forbes Local Strategic Planning Statement 2040. The Draft Forbes Housing Strategy states the intention for the land to be rezoned to RU1 Primary Production. The need for the planning proposal is to bring the land into the Standard Instrument LEP format and repeal Forbes LEP 1986 so that there is a consistent LEP across the LGA. This can only be achieved through a planning proposal.

3 Strategic assessment

3.1 Regional Plan

The following table provides an assessment of the planning proposal against relevant aspects of the Central West and Orana Regional Plan 2041.

Table 4 Regional Plan assessment

Regional Plan Objectives	Justification
Objective 7: Plan for resilient places and communities	The planning proposal brings the area into the current Forbes LEP 2013 without further intensification of the land use, which prevents increasing density in high hazard flood liable land. The planning proposal is consistent with this objective.
Objective 15: Manage rural residential development	The planning proposal will help provide a current and consistent rural land use management across the LGA. The planning proposal is consistent with this objective.

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 5 Local strategic planning assessment

Local Strategies	Justification
Forbes Local Strategic Planning Statement 2020 (LSPS)	The LSPS provides strategic merit for the subject land identified as deferred matters to be resolved through the process of planning proposal, which allows for the logical and straightforward zoning of land in the LGA by using one LEP. The planning proposal is consistent with the LSPS.
Draft Forbes Local Housing Strategy	It is identified in the Draft Forbes Housing Strategy that the area should be rezoned to RU1 Primary Production. The planning proposal is consistent with the draft Strategy.

3.3 Section 9.1 Ministerial Directions

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

Table 6 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
1.1 Implementation of Regional Plans	Consistent	The planning proposal has demonstrated consistency with the Central West and Orana Regional Plan 2041 (refer to section 3.1 above).
4.1 Flooding	Consistent	The site has been identified as high hazard in the Forbes Flood Study 2020. The planning proposal does not seek to change or intensify the use of the land. There is no change to the flood control provisions.
9.1 Rural Zones	Consistent	The planning proposal does not propose to rezone the land for other use or increase the permissible density of the land within a rural zone.
9.2 Rural lands	Consistent	The planning proposal does not propose to change the development controls that apply to the land.

3.4 State environmental planning policies (SEPPs)

Table 7 Assessment of planning proposal against relevant SEPPs

SEPPs	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
SEPP (Resilience and Hazards 2021)	Chapter 4 Remediation of land	Consistent	There are risks of contamination associated with agricultural uses. However, the planning proposal does not propose to change the land uses and it is generally consistent with this SEPP.

4 Site-specific assessment

4.1 Environmental

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

Table 8 Environmental impact assessment

Environmental Impact	Assessment
Flood prone land	The site is mapped as flood prone land ranging from low hazard fringe through to high hazard on Council's flood study mapping. However, there is no change to the potential intensification for dwelling house purposes and there will be restriction on uses that are deemed suitable for a primary production.
Biodiversity	There is no change to the land use proposed and no change to any existing development controls relating to the land.

4.2 Social and economic

The planning proposal will enable creation of one comprehensive LEP for the Forbes LGA. There is community benefit in streamlining development assessment process by having one LEP applying to the Forbes Shire and acknowledging the flood prone nature of the area

4.3 Infrastructure

The land is rural agricultural land with a minimum lot size of 40 ha. There will be no changes to the existing infrastructure.

5 Consultation

5.1 Community

It is recommended that the planning proposal to be publicly exhibited for a minimum of 28 days (20 working days) given the nature of the planning proposal.

The exhibition period proposed is a condition of the Gateway determination. Council should also ensure that each landowner affected by this proposal is notified.

5.2 Agencies

It is recommended that agency consultation is undertaken with DPE Biodiversity, Conservation Science Division (BCD) in relation to flooding. No other agency consultation is required.

6 Timeframe

The planning proposal suggests the LEP could be finalised by September 2023.

The Department recommends a time frame of 6 months.

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

7 Local plan-making authority

Due to the nature of the proposed amendment the Department recommends that Council 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:

- Strategic Merit – the planning proposal is supported by the Forbes LSPS and the draft Forbes Local Housing Strategy. It is sufficient to allow the planning proposal to proceed as it seeks to resolve the deferred matter and include provisions for the area in the Forbes LEP 2013. The zoning, minimum lot size and height of building provisions will match the current standards of the Forbes LEP 1986 in terms of dwelling house permissibility.

As discussed in the previous sections 4 and 5, the proposal should be updated to:

- Include maps which show the current and proposed zoning, current and proposed minimum lot size, current and proposed height of building maps (though no change is required) and current and proposed land application maps.
- Amend the project milestones to reflect the 6 months finalisation timeframe

9 Recommendation

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 amended to:
 - Incorporate all the maps for the deferred area as part of the proposed amendment including: current and proposed land zoning maps, current and proposed minimum lot size maps, current and proposed height of building maps and current and proposed land application map.
 - Amend the Project Timeframe to reflect the Gateway determination of the proposal and subsequent milestones for finalisation in six (6) months
2. Public exhibition is required under section 3.34(2)(c) and clause 4 of Schedule 1 to the Act as follows:
 - (a) the planning proposal is categorised as standard as described in the *Local Environmental Plan Making Guideline* (Department of Planning and Environment, 2022) and must be made publicly available for a minimum of 20 working 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 *Local Environmental Plan Making Guideline* (Department of Planning and Environment, 2022).
 - (c) Council is to ensure that all affected landowners are notified of the planning proposal.
 - (d) Consultation is required with the Department of Planning and Environment – Biodiversity Conservation and Science Division under section 3.34(2)(d) of the Act. The Department of Planning and Environment – Biodiversity Conservation and Science Division is to be provided with a copy of the planning proposal and any relevant supporting material and given at least 30 days to comment on the proposal.
3. 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).

4. The Council as planning proposal authority is authorised to exercise the functions of the local plan-making authority 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 applicable directions of the Minister under section 9.1 of the Act or the Secretary has agreed that any inconsistencies are justified; and
 - (c) there are no outstanding written objections from public authorities.
5. The LEP should be completed six (6) months from the date of the gateway determination.

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(Signature)_____
6/07/2023 (Date)

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