

Planning and Assessment

IRF20/1365

Gateway determination report

LGA	Forbes
PPA	Forbes Shire Council
NAME	Forbes LEP 2013 amendment to allow certain large rainwater tanks to be exempt development on zone RU5 Village (0 homes, 0 jobs)
NUMBER	PP_2020_FORBE_001_00
LEP TO BE AMENDED	Forbes Local Environmental Plan 2013
ADDRESS	Village of Ootha
DESCRIPTION	N/A
RECEIVED	27 March 2020
FILE NO.	IRF20/1365
POLITICAL DONATIONS	There are no known donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no known meetings or communications with registered lobbyists with respect to this proposal

1. INTRODUCTION

1.1 Description of planning proposal

Forbes Shire Council have prepared a planning proposal to amend Schedule 2 - Exempt Development of the Forbes Local Environmental Plan (LEP) 2013. The proposed amendment would allow certain large rainwater tanks to be exempt development on zone RU5 Village land. The amendment is required to provide increased water security to the village of Ootha.

1.2 Site and surrounding area description

The village of Ootha is the only part of the Shire zoned RU5 Village, which will be affected by the LEP amendment (**Figure 1**). Ootha is approximately 60km north-west of Forbes in the corner of the Forbes Local Government Area (LGA) just off Henry Parkes Way. According to the 2016 census there were 82 people living in Ootha and surrounding properties. There are currently 28 lots within the RU5 Village zone. Given the Minimum Lot Size (MLS) of 1000m² there is potential for some of the larger lots to subdivide and erect additional rainwater tanks if the proposal is adopted. However, many of the dwellings straddle multiple lots and from 2018 aerial imagery there were approximately eight dwellings which could be affected by this proposal.

Outside of the village of Ootha is a farming community with a mixture of cropping and grazing. All surrounding land is zoned RU1 Primary Production except for the Orange Broken Hill Railway just south of Ootha which is zoned SP 2 (**Figure 2**).



Figure 1: The RU5 Village zoned part of Ootha, which is affected by the proposal



Figure 2: Land surrounding Ootha

1.3 Existing planning controls

According to the Forbes LEP 2013 the subject site is affected by the following planning controls:

- Zoned RU5 Village, which is an open zone permitting rainwater tanks with consent.
- MLS of 1000m².
- Height of building restriction to 10m.

There are no natural hazards or constraints mapped for the village under the Forbes LEP 2013. There is one heritage building, a Presbyterian Church (I135) located on Lot 50 DP 752070, which is the most south-eastern lot of the village.

The proposal is minor in nature and consistent with the objectives of the RU5 Village zone as it will assist with:

- Providing for a range of land uses, services and facilities that are associated with a rural village.
- Encouraging, protecting and supporting the rural village character of the locality.

1.4 Summary of recommendation

Proceed with conditions – The planning proposal is recommended to proceed with standard conditions as the proposal addresses an obvious need of the Ootha community without imposing site specific LEP provisions. The proposal is not expected to create a precedent or cause unintended consequences as it is limited to the RU5 zone, which only affects 28 lots within Ootha. The proposal is consistent with local, regional and State planning policy including all section 9.1 Ministerial Directions, therefore no agency consultation is required.

2. PROPOSAL

2.1 Objectives or intended outcomes

The intent of the proposal is to allow residents of Ootha to install large rainwater tanks without delays or fees associated with submitting a development application. Council estimates the average household uses 1000L of water per day across the LGA. The existing exempt provisions for rainwater tanks are 10,000L on RU5 Village zoned land under the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP). Therefore, the current exemption threshold would only provide 10 days of potable water supply and a higher limit is needed in this case.

Council are proposing to increase the limit of exempt rainwater tanks to 20% of the lot size. The average lot is 1000m² in Ootha which would allow for up to 200,000L (or 200m²) of the lot to be covered in rainwater tanks and would provide up to 200 days potable water supply. As described in section 1.2, there are larger lots, up to 2400m², which would allow up to 480,000L (or 480m²) of the lot to be covered in rainwater tanks.

2.2 Explanation of provisions

The intent of the proposal would be achieved by introducing the first local exempt provision into Schedule 2 of the Forbes LEP 2013. While the exact controls will be

determined by Parliamentary Counsel, Council have prepared draft controls for consideration:

- a) Applies only to land within RU5 Village Zone in addition to other zones listed within State Environmental Planning Policies;
- b) Located at least 1 metre from each boundary if greater than 1.8 metres tall;
- c) The total area of rainwater tanks not be greater than 20% of the holding of land;
- d) Be located behind the building line of any road frontage;
- e) Not rest on the footings of an existing building for support;
- f) not require cut and fill of more than 1m below or above ground level (existing);
- g) be fitted with a screened rain head designed to ensure self-cleaning and prevent leaf litter entering into the water tank;
- h) be fitted with a first-flush device incorporating an automatic resetting valve that causes initial run-off rainwater to bypass the tank;
- i) be constructed or installed with inlets and outlets designed to prevent mosquitoes breeding in it;
- j) have its overflow connected to an existing stormwater drainage system that does not discharge to an adjoining property, or cause a nuisance to adjoining owners;
- k) have a sign affixed to it with a statement to the effect that the water in the tank is rainwater;
- l) Be located so as to not detract from the heritage building and
 - a. Be of a colour that compliments the heritage or
 - b. Be covered by a screen, constructed from materials and in colours that are sympathetic to the heritage buildings.

These controls match the existing exempt provisions for the RU5 Village zone under the Codes SEPP, except for increasing the limit from 10,000L to 20% of the land holding and an amended heritage protection clause. The Departments Codes Team has been consulted and broadly accepted. The two local provisions were amended by Council after initial submission of the proposal after consultation with the Codes Team.

2.3 Mapping

No amendments to LEP maps are required for this proposal.

3. NEED FOR THE PLANNING PROPOSAL

The intent of the proposal is to allow residents of Ootha to build large rainwater tanks without delays or fees associated with submitting a development application. Given the small size of Ootha and distance from Forbes, the reticulated water supply will stop provided treated water in the future. Therefore, additional sources of potable water are required to adequately supply Ootha residents.

Alternative methods of the proposal are summarised below:

- Do nothing. If the proposal does not go ahead, the erection of certain large rainwater tanks is still permissible through the development application process.
- Amending the Codes SEPP to increase the limit of exempt rainwater tanks within the RU5 zone. This is not feasible as it would change the exempt provisions across the whole State and may not be suitable at other locations.
- Amending the Forbes LEP 2013, RU5 Village zone land use table by listing rainwater tank as permissible without consent. This is not recommended as it would not allow for controls to limit the size or type of rainwater tank installed.
- Therefore, amending Schedule 2 of the Forbes LEP 2013 is the preferred method of allowing certain large rainwater tanks to be exempt development.

4. STRATEGIC ASSESSMENT

4.1 State

There are no state strategic planning frameworks applicable to this proposal.

4.2 Regional / District

The proposal is consistent with the Central West Orana Regional Plan 2036 (CWORP), specifically actions:

- 23.4 – Build drought resilience in rural communities by supporting primary producers and communities to improve preparedness and decision making.
- 29.4 – Incorporate water sensitive urban design in new developments.

The proposal will initiate Council's delivery of rainwater tanks to Ootha. This will provide them a renewable source of potable water in addition to the non-potable water still available via the reticulated supply. This will help the village of Ootha be self-sufficient, especially during period of uncertain rainfall.

4.3 Local

The proposal does not directly relate to any actions within the Forbes Growth Management Strategy 2009. Therefore, the proposal is not inconsistent with the local land use strategy.

Providing water security for the village of Ootha through large rainwater tanks is consistent with the Forbes Community Strategic Plan, specifically:

- NE8 - Ensure that natural water resources remain clean and healthy and secure, and that supplies are allocated equitably.
- IS12 - Identify and plan for the long terms needs of Forbes communities in terms of urban water supply and stormwater management.

4.4 Section 9.1 Ministerial Directions

The planning proposal is consistent with the following section 9.1 Ministerial Directions:

- 3.1 Residential Zones – This Direction applies as the proposal will affect a residential zone. The proposal is consistent with the objectives of the zone, especially making efficient use of existing infrastructure and services.
- 5.10 Implementation of Regional Plans – The proposal is consistent with the CWORP as outlined in section 4.2.

- 6.1 Approval and Referral Requirements – The proposal will reduce the approval requirements for development therefore is consistent with this Direction.
- 6.3 Site Specific Provisions – The proposal is consistent with the objectives of the Direction to avoid unnecessarily restrictive site specific planning controls.

4.5 State environmental planning policies (SEPPs)

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

The proposal will insert a local exempt condition which broadly match the existing exempt provisions for rainwater tanks. The local provision will allow additional development to be exempt, therefore, is not inconsistent with the Codes SEPP. The Codes Team have reviewed and approve of the local exempt provisions.

5. SITE-SPECIFIC ASSESSMENT

5.1 Social

The proposal will simplify the planning process for Ootha residents to install rainwater tanks. Helping residents' access to a sustainable water supply will have a positive social impact.

5.2 Environmental

There are no natural hazards or constraints mapped for the village under the Forbes LEP 2013. The proposal will allow certain large rainwater tanks to be installed without consent on previously cleared residential land, which is not expected to adversely affect the environment.

5.3 Economic

The proposal will allow residents of Ootha be able to access a sustainable source of water without payment. This will have a positive economic outcome for Ootha residents in the long and short term.

6. CONSULTATION

6.1 Community

Council has proposed a 14 day community consultation period as they classify the planning proposal as low impact. A 'low' impact planning proposal is:

- Consistent with the pattern of surrounding land use zones and/or land uses.
- Consistent with the strategic planning framework.
- Presents no issues with regard to infrastructure servicing.
- Not a principal LEP.
- Does not reclassify public land.

The planning proposal meets all the points listed above as it will only amend which types of rainwater tanks are considered exempt development in the RU5 zone. Therefore, a 14 days community consultation period is considered appropriate.

6.2 Agencies

No agency consultation has been proposed by Council. Given the minor nature of the proposal, consistency with section 9.1 Directions and it will not affect any environmentally constrained land, no agency consultation is considered appropriate.

7. TIME FRAME

Council have proposed a three (3) month time frame for completing the LEP. Given the uncertainty around consultation and work from COVID-19 if it is considered appropriate to extend the timeframe to six (6) months.

8. LOCAL PLAN-MAKING AUTHORITY

Council has requested to be the local plan-making authority. Council does not own any land affected by the planning proposal and should be authorised to be the local plan-making authority.

9. CONCLUSION

The planning proposal is recommended to proceed with standard conditions as:

- The proposal addresses an obvious need of the Ootha community without imposing site specific LEP provisions.
- The proposal is consistent with local, regional and State planning policy including all section 9.1 Ministerial Directions.
- The proposal is low impact and meets the requirements for a 14 day public exhibition.
- Council does not own any land affected by the proposal and is recommended to be the local plan making authority.

10. RECOMMENDATION

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

1. Public exhibition is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:
 - (a) the planning proposal is classified as low impact as described in *A guide to preparing local environmental plans* (Department of Planning and Environment, 2018) and must be made publicly available for a minimum of **14 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 section 6.5.2 of *A guide to preparing local environmental plans* (Department of Planning and Environment, 2018).
2. No consultation is required with public authorities/organisation under section 3.34(2)(d) of the Act.
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 planning proposal authority is authorised as the local plan-making authority to exercise the functions 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 section 9.1 Directions or the Secretary has agreed that any inconsistencies are justified; and
 - (c) there are no outstanding written objections from public authorities.
5. The time frame for completing the LEP is to be **6 months** following the date of the Gateway determination.



14.4.20

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15.4.20

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