

Forbes LEP 2013 - Amendment 3 - To permit Strata and Community Title Subdivision in certain zones

Proposal Title : **Forbes LEP 2013 - Amendment 3 - To permit Strata and Community Title Subdivision in certain zones**

Proposal Summary : **To amend the Forbes LEP 2013 to:**

- Allow for strata and community title subdivision for the purpose of a dwelling below the minimum lot size in zones R1 - General Residential and B2 - Local Centre, and**
- Allow strata title and community title subdivision to be exempt from clause 4.1 minimum subdivision lot size within the Forbes LEP 2013.**

PP Number : **PP_2016_FORBE_001_00** Dop File No : **16/05241-1**

Proposal Details

Date Planning Proposal Received :	12-May-2016	LGA covered :	Forbes
Region :	Western	RPA :	Forbes Shire Council
State Electorate :	ORANGE	Section of the Act :	55 - Planning Proposal
LEP Type :	Policy		

Location Details

Street :

Suburb :

City :

Postcode :

Land Parcel : Land within within the Forbes LGA.

DoP Planning Officer Contact Details

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RPA Contact Details

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Land Release Data

Growth Centre :	N/A	Release Area Name :	N/A
Regional / Sub Regional Strategy :	N/A	Consistent with Strategy :	N/A
MDP Number :		Date of Release :	
Area of Release (Ha) :	0.00	Type of Release (eg Residential / Employment land) :	N/A
No. of Lots :	0	No. of Dwellings (where relevant) :	0
Gross Floor Area :	0	No of Jobs Created :	0

The NSW Government Lobbyists Code of Conduct has been complied with :

If No, comment :

Have there been meetings or communications with registered lobbyists? :

If Yes, comment : **There have been no known meetings or communications with registered lobbyists.**

Supporting notes

Internal Supporting Notes :

The planning proposal seeks to enable strata and community title subdivision for the purpose of a dwelling below the minimum lot size within zones R1 - General Residential and B2 - Local Centre, and enable strata and community title subdivision for purposes other than a dwelling in all zones.

The Forbes LEP 1986 did not restrict the strata and community title subdivision of land below the minimum lot size. However, it should be noted that the Forbes LEP 1986 did not include any provisions specifically related to strata or community title subdivisions.

Council only adopted the model clause for strata subdivision in certain rural and environment protection zones in the Forbes LEP 2013, and rely on the Forbes Development Control Plan provisions for strata and community title subdivision. The Forbes DCP 2013 provides that the minimum lot size for strata and community title subdivision is 250m², and the minimum lot size of a lot where strata and community title subdivision is proposed is 740m².

Council has obtained legal advice that Clause 4.1(4) of the Forbes LP 2013 prohibits the subdivision of land under strata and community title schemes that does not meet the minimum lot size, unless it is already within an existing strata or community title development.

It is the intent of Council to permit strata and community title subdivision within zones R1 General Residential and B2 Local Centre below the minimum lot size, and to facilitate the strata and community title subdivision of land in all other zones, but not for the purposes of a dwelling. No minimum lot size is proposed.

Historically the strata and community title subdivision clause specify that the size of any lot to which the clause applies must be not less than the minimum lot size shown on the minimum lot size map that applies to the parcel of land.

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It is not Council's intention to facilitate the permissibility for any additional dwellings within Rural zones. The inclusion of the Community Title Subdivision provisions within the Rural zones is intended to provide for the subdivision of rural land for agricultural uses, or uses that are permitted with consent within the rural zones, for example, a co-op situation where each parcel of land is under separate ownership, however community land or associated property can share infrastructure, such as internal roads, sheds or irrigation equipment. This will provide flexibility to encourage innovative activities and changes to agriculture.

The Forbes LEP 2013 includes the provision for strata subdivision in rural and environment protection zones, being Clause 4.2A. Council intends to retain this clause as well as introduce a new clause for community title subdivision.

There are no objections to undertaking strata or community title subdivision in zone R1 or zone B2 with no minimum lot size.

Council has requested authorisation to undertake plan making delegations. This is considered appropriate.

The application was received on 20 April 2016. The Department requested additional information on 26 April 2016. This information was provided to the Department on 12 May 2016.

External Supporting
Notes :

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment : **The planning proposal objectives are to:**

- Enable strata and community title subdivision below the minimum lot size and exempt from clause 4.1 Minimum subdivision lot size of the Forbes LEP 2013;
- Enable strata and community title subdivision for the purposes of a dwelling below the minimum lot size within zones R1 - General Residential and B2 - Local Centre; and
- Enable strata and community title subdivision for purposes other than a dwelling in all zones.

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? **Yes**

Comment : **The explanation of provisions is consistent with the statement of objectives.**

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **Yes**

b) S.117 directions identified by RPA :

* May need the Director General's agreement

- 1.1 Business and Industrial Zones**
- 1.2 Rural Zones**
- 1.5 Rural Lands**
- 3.1 Residential Zones**
- 3.3 Home Occupations**
- 4.3 Flood Prone Land**

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Is the Director General's agreement required? **Unknown**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified? **SEPP (Exempt and Complying Development Codes) 2008**
SEPP (Rural Lands) 2008

e) List any other matters that need to be considered :

Section 117 Directions:

1.2 - Rural Zones

The planning proposal is consistent with this direction as it does not propose to rezone any land in a rural zone.

1.5 - Rural Lands

This direction is applicable to the planning proposal as it is proposed to permit strata and community title subdivision (not for the purposes of a dwelling) in rural zones. This is considered to be inconsistent with the objectives of the Rural Lands SEPP. Council have stated in its documentation that the proposal is consistent with the direction as the amendment will not impact the existing rural or environmental zones as there is no proposed change to development types which are permissible within the zones.

Council will be required to assess any proposed impact on rural lands during the assessment of an application for strata or community title subdivision. It is noted that the permissibility of strata or community title subdivision within rural zones is specifically not for the purposes of dwellings. In this regard, the Director Regions, Western can be satisfied the proposal is not inconsistent with the direction.

3.1 - Residential Zones

This direction applies to the proposal as it is proposed to include provisions for the strata and community title subdivision of lots within zone R1 - General Residential for the purposes of a dwelling.

The proposal allows for the opportunity and flexibility for the density of the land to be increased significantly and the Director Regions, Western can be satisfied the proposal is consistent with the Ministerial direction.

3.3 - Home Occupations

The planning proposal is consistent with this direction as it does not limit the opportunity to establish a home occupation within the Forbes LGA.

4.3 - Flood Prone Land

The planning proposal applies to flood prone land. The proposal allows for an increase in density of flood prone land, however, does not apply a change to the minimum lot size of land. Council will be required to assess any impacts of strata or community title subdivision on the merits of any development application received. The proposal does not change the consideration and assessment requirement under the Floodplain Development Manual. The Director Regions, Western can be satisfied the proposal is consistent with the direction.

SEPPs:

Exempt and Complying Development Codes (2008):

The SEPP does not include provisions for strata and community title subdivision, therefore the proposal is consistent with the Exempt and Complying Development Code.

Rural Lands:

The proposal intends to permit strata and community title subdivision on rural land for any purpose except for dwellings. Impacts on the agricultural viability of the land, and consistency with the objectives of the zone will be required to be assessed by Council at development application stage. It is not expected that the provision for community and strata title subdivision will be detrimental to rural lands or the rural planning principals

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within the SEPP and will provide flexibility for primary production activities. The proposal is not considered to be inconsistent with the SEPP.

Have inconsistencies with items a), b) and d) being adequately justified? **Yes**

If No, explain :

Mapping Provided - s55(2)(d)

Is mapping provided? **No**

Comment : **No mapping changes are required as part of the proposed amendment - only changes to the instrument.**

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : **Council has proposed a community consultation period of 14 days. It is considered that as the amendment proposes a variation to the LEP across the Forbes local government area, that 28 days is appropriate.**

Additional Director General's requirements

Are there any additional Director General's requirements? **Unknown**

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment :

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP : **The Forbes LEP 2013 was notified on 9 August 2013.**

Assessment Criteria

Need for planning proposal : **A planning proposal is considered the most appropriate mechanism to achieve the provision for strata and community title subdivision within the LEP.**

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Consistency with strategic planning framework :

The Forbes Shire Growth Management Strategy 2009 (endorsed by Director General 21 April 2009)(Strategy) is applicable to the subject land.

The provision for strata and community title subdivision within Forbes is not covered within the Strategy, however is consistent with the aim of the Strategy, which is to provide a range and variety of housing choices for the residents of Forbes. It is considered that the proposal is not inconsistent with the Strategy.

The proposal is inconsistent with the Forbes Development Control Plan (DCP) 2013, in that no minimum lot size is specified for strata and community title subdivision. The DCP provides:

- "The minimum allotment size for a strata or community title allotment within a subdivision shall be 250m2.
- The minimum allotment up which a strata or community titled subdivision shall be 740m2."

The DCP does not specify zones to which this standard applies, and it can therefore be assumed that it applies to all zones, including rural zones.

Council has not requested to adopt the provisions of the DCP as minimum standards for the strata and community title subdivision of lots within zone R1 - General Residential.

There are no objections to undertaking strata or community title subdivision in zone R1 or zone B2 with no minimum lot size. The planning proposal propose to provide for additional opportunities for dwellings in rural and environmental zones, which is consistent with the broader government policy in relation to the protection of agricultural and primary production land.

Environmental social economic impacts :

The proposal does not directly impact any areas of environmental significance. The proposal applies to the strata and community title subdivision across the LGA and in all zones. Each proposal will be required to be assessed on merit by Council.

Assessment Process

Proposal type : **Consistent** Community Consultation Period : **28 Days**

Timeframe to make LEP : **9 months** Delegation : **RPA**

Public Authority Consultation - 56(2)(d) : **NSW Department of Primary Industries - Agriculture**

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons :

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

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If Other, provide reasons :

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
Additional Information - 12 May 2016.pdf	Proposal	Yes
Council Report.pdf	Proposal	Yes
Council Resolution.pdf	Proposal	Yes
Cover Letter.pdf	Proposal Covering Letter	Yes
Evaluation Criteria for Plan Making Delegations.pdf	Determination Document	Yes
Forbes DCP 2013 Subdivision Provisions.pdf	Proposal	Yes
Planning Proposal.pdf	Proposal	Yes

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions:

- 1.1 Business and Industrial Zones**
- 1.2 Rural Zones**
- 1.5 Rural Lands**
- 3.1 Residential Zones**
- 3.3 Home Occupations**
- 4.3 Flood Prone Land**

Additional Information : **1. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 (EP&A Act) as follows:**

(a) The planning proposal is required to be made publicly available on exhibition for 28 days as described in A Guide to Preparing LEPs (Department of Planning and Infrastructure 2013).

(b) The relevant planning 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 5.5.2 of A Guide to Preparing LEPs.

No consultation with agencies is required.

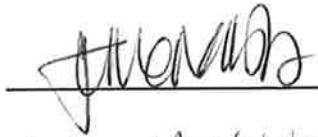
2. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).

3. The timeframe for completing the LEP is to be 9 months from the week following the date of the Gateway determination.

Supporting Reasons : **The proposed amendment to include provisions for strata and community title subdivision within the Forbes LEP 2013 is supported. The Director Regions, Western can use delegation as the proposal is consistent with broader Government Policy. Impacts associated with the establishment of community title subdivision in the applicable zones will be assessed at the development application stage. The proposal will provide flexibility to enable development throughout Forbes Local Government Area.**

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Signature:



Printed Name:

Jenna McNabb

Date:

20/5/16

Endorsed

Wgamsey

TLWR

23/05/16