



PLANNING PROPOSAL

To Amend Clause 4.1 of the Forbes LEP 2013 relating to Strata and
Community Title Subdivision

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INTRODUCTION

This Planning Proposal seeks to explain and justify the proposed amendment to the Forbes Local Environmental Plan 2013. This Planning Proposal has been prepared in accordance with section 55 of the Environmental Planning and Assessment Act 1979, and the relevant Department of Planning and Environment guidelines including A Guide to Preparing a Planning Proposal and a Guide to Preparing a Local Environmental Plan.

This Planning Proposal seeks to amend the Forbes LEP 2013 to:

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

This planning proposal is being prepared in response to legal advice received by Council on the interpretation of clause 4.1 in the Forbes LEP. The legal advice is discussed in more detail in the ‘background’ section of this proposal.

Council at the Ordinary meeting held 17th December, it was resolved to prepare a Planning Proposal to:

To facilitate the introduction of a clause allowing the creation of Community Title and Strata Title Lots below the minimum lot size as illustrated on the Minimum Lot Size map.

Discussions with the Department of Planning have indicated that the specific clause does not need to be cited within the Planning Proposal. The specific clause will be developed in consultation with The Department of Planning and Parliamentary Counsel. The objectives of the proposed clause are discussed in more detail in the ‘background’ section of this proposal.

SCOPE OF REPORT

This Planning Proposal has been prepared in accordance with the NSW Department of Planning’s (DoP) advisory documents ‘A Guide to Preparing Local Environmental Plans’ and ‘A Guide to Preparing Planning Proposals’. The latter document requires the Planning Proposal to be provided in five (5) parts, these being;

- Part 1 – A statement of the objectives or intended outcomes of the proposed LEP;
- Part 2 – An explanation of the provisions that are to be included in the proposed LEP;

- Part 3 – The justification for those objectives, outcomes, and provisions and the process for their implementation;
- Part 4 – Discusses proposed mapping changes; and
- Part 5 – Details of the community consultation that is to be undertaken with the Planning proposal. Part 5 would be confirmed following a Gateway Determination of this Planning Proposal by the Department of Planning.

BACKGROUND

Forbes Shire Council converted the *Forbes Local Environmental Plan 1986* (FLEP 1986) into the Standard Instrument format in 2013. The 2013 Forbes Local Environmental Plan was intended to be an LEP that provided no significant changes from existing LEP policies.

The 1986 LEP did not limit the community and strata title subdivision of land below the minimum lot size. The Forbes Development Control Plan was the development guidelines that dictated the minimum size of Community and Strata title lots within the Forbes Shire. Traditionally the Community Title developments were for multiunit dwellings, and attached dwellings such as duplex or triplex developments. In other instances Community Title development are used for smaller detached dwelling that share a garden and/or access.

The clause that permitted this development type is not present within the Forbes LEP 2013. Legal Advice received by Council has indicated that Clause 4.1 (4) prohibits the subdivision of land under Community and Strata title, unless within an existing Community and Strata title development. This means that Council are unable to grant consent for community or strata title development within Forbes Shire, when not within an existing Community or Strata Title subdivision.

This was not the outcome that Council had hoped to occur when the 2013 LEP was developed. It was anticipated that the mechanism that allowed the creation of Community and Strata Title lots below the minimum lot size within the 1986 LEP would carry over into the 2013 LEP. Council have therefore been unable to grant consent to a number of legitimate development proposals in Forbes due to clause 4.1 (4) restricting the use of Community and Strata title subdivisions on free hold land.

The commercial and industrial zones within Forbes Shire have generally large existing lot sizes, with clause 4.1(4) preventing the subdivision of these lots into community or strata title for business and industry purposes. This is also not Council's intent.

Council wish to provide for community and strata title developments within Forbes Shire, to promote a mixture of housing typologies and various sized land.

Land to Which the Planning Proposal Applies

The planning proposal will apply to all land that the Forbes LEP 2013 applies to. This area covers the entire LGA.

PART 1 – OBJECTIVES OR INTENDED OUTCOMES

The objectives of this planning proposal are to:

- Encourage housing diversity without adversely impacting on residential amenity.
- Minimise the fragmentation and isolated development of rural land.
- Allow for medium density development in appropriate zones.
- Promote infill development.

These objectives translate into the following intended outcomes:

- To enable Community and Strata title subdivision below the minimum lot size and exempt from clause 4.1 Subdivision Lot Size.
- To enable Community and Strata Title subdivision for the purpose of a dwelling below the minimum lot size within R1 and B2 zones.
- To enable the Community and Strata Title subdivision for purpose other than a dwelling in all zones.

PART 2 – EXPLANATION OF PROVISIONS

This Section of the Planning proposal will not attempt to draft the proposed amendment to the Forbes LEP 2013 as discussed with the Department of Planning and Environment. Rather it will outline in plain English the desired outcomes of the amendment, including development scenarios, which will be used by the department to draft the appropriate provisions of the LEP amendment, if approved.

The planning proposal seeks to achieve the following:

Clause 4.1 – Minimum Subdivision Lot Size

Amend the clause to allow for the subdivision of land below the minimum lot size for residential dwellings within the R1 and B2 zone, and allow community title and strata title subdivision for commercial, industrial, or agricultural uses (excluding dwellings) in all zones.

Examples of potential development scenarios are provided below.

Development Example	Scenario	Desired Outcome
Existing attached, or detached dual occupancy or multi-unit dwellings proposed to be subdivided below the minimum lot size in the R1 and B2 zone.	Applicant wishes to community or strata title subdivide existing residential development to facilitate the sale of both land and dwelling under Community or Strata Title.	Council is able to grant consent for the Community or Strata Title (subject to merit assessment). Minimum lot size requirements under 4.1 will not apply.
New multi lot development of attached, detached dual occupancy or multi-unit dwelling proposed under the minimum lots size in the R1 or B2 zone.	Applicant wished to develop and subdivide land with attached, detached dual occupancy or multi-unit dwellings, and allow the sale of individual lots.	Council is able to grant consent for the Community or Strata Title (subject to merit assessment). Minimum lot size requirements under 4.1 will not apply.
Community or Strata Title subdivision of new or existing industrial, commercial, or agricultural developments (excluding dwellings).	Subdivision of a new or existing Industrial, Commercial or Agricultural use for the purpose of Community or Strata Title by a developer, or owner who wishes to sell off some of their development.	Council is able to grant consent for the Community or Strata Title (subject to merit assessment). Minimum lot size requirements under 4.1 will not apply.

PART 3 – JUSTIFICATION

Section A – Need For The Planning Proposal

1. Is the planning proposal a result of any strategic study or report?

The proposed amendment is not the result of a strategic study or report. The Proposed amendment is the result of legal advice received by council on the interpretation of Clause 4.1 of the Forbes Local Environmental Plan 2013.

2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Council considers a planning proposal the only way to achieve the intended outcomes. This approach has been agreed with the Department of Planning and Environment.

3. Is there a net community benefit?

The net community benefit of undertaking the Planning Proposal is to facilitate a variety of development types and ensure that Forbes remains a town that provides diverse and flexible housing choice for all residents. There is also a need to ensure the accuracy and reliability of the Forbes LEP 2013, and maintain Council's policy position.

The Planning Proposal will deliver the following community benefits:

- Allow for community members and residents to undertake Community and Strata Title Developments.
- Encourage housing diversity without adversely impacting on residential amenity.
- Minimise the fragmentation and isolated development of rural land.
- Allow for medium density development in appropriate zones.
- Promote infill development.
- Reinstate Council's previous policy position under the Forbes LEP 1986 in relation to Community and Strata Title Development.

Section B – Relationship to the strategic planning framework

4. Is the planning proposal consistent with the objectives and actions of the applicable regional or subregional strategy?

There is no applicable Regional Strategy for the Forbes Shire Council area.

5. Is the Planning proposal consistent with Council's local strategy or other local strategic plan?

The proposed amendment is considered consistent with the Forbes Shire Growth Management Strategy. The proposed amendment meets the aims of the Forbes Local Environmental Plan, specifically:

- (a) To encourage and manage ecologically sustainable development in Forbes,
- (b) To reinforce the existing urban character of Forbes as the urban focus,
- (c) To reinforce the rural character of Forbes while promoting sustainable development,
- (d) To protect the agricultural land of Forbes for continued agricultural production while allowing for planned expansion at the urban fringe,
- (g) To provide a range and variety of housing choices to cater for the different needs and lifestyles of residents.

6. Is the Planning Proposal consistent with applicable State Environmental Planning Policies?

The proposed amendment is consistent with the State Environmental Planning Policies that relate to Forbes Shire.

These being:

- Rural Lands SEPP 2008
- Exempt and Complying Development

The remaining State Environmental Planning Policies do not apply to the proposed amendment.

7. Is the Planning Proposal consistent with applicable Ministerial Directions (s.117 directions)?

Ministerial Direction 1.5 Rural Lands

The Ministerial Direction 1.5 for Rural Lands applies for all Councils listed in Appendix 1 of the Rural Lands SEPP 2008. Forbes Shire Council is listed in the SEPP. Clause 3 within the Ministerial Direction for Rural Lands states that the Direction applies for all proposals that have the potential to impact an existing rural or environmental protection zone. The proposed amendment to clause 4.1 will not impact the existing rural or environmental protection zones, as there is no proposed change to development types in those zones.

Ministerial Direction 3.1 Residential Zones

Ministerial Direction 3.1 Residential Zones applies to all proposals that affect land within:

- an existing or proposed residential zone (including the alteration of any existing residential zone boundary),
- any other zone in which significant residential development is permitted or proposed to be permitted.

The proposed amendment to clause 4.1 specifically relates to the R1 zone, and therefore the ministerial direction applies.

To be compliant with Direction 3.1 the proposal must be consistent with the following provisions:

- (1) *A planning proposal must include provisions that encourage the provision of housing that will:*
 - (a) *broaden the choice of building types and locations available in the housing market, and*
 - (b) *make more efficient use of existing infrastructure and services, and*
 - (c) *reduce the consumption of land for housing and associated urban development on the urban fringe, and*

- (d) *be of good design.*
- (2) *A planning proposal must, in relation to land to which this direction applies:*
 - (a) *contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and*
 - (b) *not contain provisions which will reduce the permissible residential density of land.*

The proposed amendment of clause 4.1 will facilitate the creation of a mixture of housing typologies, and dwelling flexibility. The amendment will allow for infill development and protects Forbes rural zones and urban fringe.

All residential Community and Strata Title developments will be required to be connected to Council reticulated services. This is enforced through Council's Development Control Plan.

Ministerial Direction 4.3 Flood Prone Land

Ministerial Direction 4.3 is applicable to all Planning Proposals that relate to development on flood prone land. Forbes Shire Council is affected by flood, therefore the 4.3 Direction applies.

To be Compliant with the 4.3 Direction the proposal must be consistent with the following provisions:

- (3) *A planning proposal must include provisions that give effect to and are consistent with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005 (including the Guideline on Development Controls on Low Flood Risk Areas).*
- (4) *A planning proposal must not rezone land within the flood planning areas from Special Use, Special Purpose, Recreation, Rural or Environmental Protection Zones to a Residential, Business, Industrial, Special Use or Special Purpose Zone.*
- (5) *A planning proposal must not contain provisions that apply to the flood planning areas which:*
 - (a) *permit development in floodway areas,*
 - (b) *permit development that will result in significant flood impacts to other properties,*
 - (c) *permit a significant increase in the development of that land,*
 - (d) *are likely to result in a substantially increased requirement for government spending on flood mitigation measures, infrastructure or services, or*
 - (e) *permit development to be carried out without development consent except for the purposes of agriculture (not including dams, drainage canals, levees, buildings or structures in floodways or high hazard areas), roads or exempt development.*
- (6) *A planning proposal must not impose flood related development controls above the residential flood planning level for residential development on land, unless a relevant planning authority provides adequate justification for those controls to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General).*
- (7) *For the purposes of a planning proposal, a relevant planning authority must not determine a flood planning level that is inconsistent with the Floodplain Development Manual 2005 (including the Guideline on Development Controls on Low Flood Risk Areas) unless a relevant planning authority provides adequate justification for the proposed departure from that Manual to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General).*

The proposed amendment to Clause 4.1 will impact land within a flood plain. However any new development that is undertaken as a result of the amendment to Clause 4.1 will be required to meet the standards and development controls of the Forbes Development Control Plan, specifically Chapter 4: Flooding and Flood Effected Land. Therefore the proposed amendment will not pose an increased risk to life or an increase in the requirement for government spending on flood mitigation measures, infrastructure, or services.

Section C – Environmental, Social and Economic Impact

Is there likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

The proposed amendment to clause 4.1 will not directly impact any areas of environmental significance. Any developments that are a result of the proposed amendment will be assessed under the Forbes Development Control Plan, and will be assessed granted on merit in accordance with the relevant policies and development controls.

Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

The proposed amendment to Clause 4.1 is not anticipated to cause any negative environmental effects. Each development application received as a result of the proposed amendment will be individually assessed against all council relevant plans and policies and development controls. The proposed amendment does not fundamentally change the ability that Council has to assess each application based its potential to cause environmental harm.

Has the Planning proposal adequately addressed any social and economic effects?

The proposed amendment of clause 4.1 facilitates the creation of a mixture of dwelling types and flexible housing choices for the residents of Forbes. This will have a positive social impact through the provision of dwellings suitable for a mixture of residents. Economic effects will be positive as the proposed amendment will potentially facilitate new development, and infill development within the urban area.

Section D – State and Commonwealth interests

Is there adequate public infrastructure for the planning proposal?

The Planning proposal affects the majority of the LGA. Existing public infrastructure is expected to adequately provide for any additional dwellings as a result of the proposed amendment.

What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

The views of state and commonwealth public authorities would be ascertained in accordance with the comments contained in the Gateway Determination.

PART 4 – MAPPING

The proposed amendment to clause 4.1 will not require the change to the current LEP mapping.

PART 5 – COMMUNITY CONSULTATION

The proposal to amend clause 4.1 is deemed to be 'low impact planning proposal'. This means that the Planning Proposal is:

- Generally consistent with the pattern of surrounding land use zones and or land uses;
- Is consistent with the strategic planning framework;
- Presents no issues with regards to infrastructure servicing;
- Is not a principle LEP; and
- Does not reclassify public land.

Therefore it is considered that this matter would require consultation for 14 days.

It is not considered that a greater period of notification is required, nor a public hearing should be held given that the matter accords generally with the existing objectives and aims of the Forbes Local Environmental Plan 2013.

APPENDIX 1 – REPORT TO COUNCIL

Report to Council – 17 December 2015

Change to Minimum Lot size for Community and Strata Title Development

Background:

Forbes Shire Local Environmental Plan currently does not facilitate the creation of Community Title lots below the minimum lot size for each zone. Traditionally the Creation of a Community Title Lot would be below the minimum lot size, and would allow for developments such as townhouses, duplexes, units etc.

The 1986 LEP allowed for the creation of Community title lots below the minimum lot size, ensuring that the lots met the minimum size for a dwelling, this being 250m². In moving to the new standard instrument LEP (the 2013 LEP), the mechanism that facilitates this type of development has been removed.

Legal advice received indicated that the clause that was previously relied upon in the 2013 LEP, does not legally allow the creation of community and strata title lots. Therefore an additional clause needs to be adopted into the 2013 LEP.

Community and Strata Title Lots

Community Title and Strata Title can be described as the following:

1. A Strata Title unit's boundaries are defined by reference to parts of the building, not by the land. There must be an area of common property, for which everyone is responsible.
2. Community Title is defined by lot boundaries and surveyed measurements unlimited in height and depth, as well as reference to parts of the building. Community Title Corporations are also appointed and comprise registered owners of the lots in the community scheme. The Corporation is responsible for the administration of the group's by-laws and for maintaining the common property and any fixtures on the property.

The inclusion of a clause within the LEP that allows for the creation of Community/Strata Title lots below the minimum lot size will create greater development flexibility and housing diversity without impacting on residential amenity.

Standard Instrument LEP Model Clause