



Planning & Environment

PORT STEPHENS COUNCIL Information Services

- 7 MAR 2016

File No. PSC2015-00703
Action by SARAH GUNDEL
☐ R.H.C.

Mr Wayne Wallis
General Manager
Port Stephens Council
PO Box 42
Raymond Terrace NSW 2324

Our ref: 15/04617
Your ref: PSC2015-00703

Attention: Ms Sarah Connell

Dear Mr Wallis

Planning proposal PP_2015_PORTS_003_00 – Water storage facilities as exempt development in the RU1 Primary Production and RU2 Rural Landscape zones

I refer to Council's correspondence requesting direction from the Department following an unresolved objection to PP_2015_PORTS_003_00 from the Office of Environment and Heritage (OEH).

The Department has met with OEH on several occasions in order to resolve the matters raised. As part of these discussions, a range of options for facilitating Council's proposal were explored. While OEH understands Council's intention and notes the application of similar provisions elsewhere, it remains of the view that water storage facilities should not be exempt development because it would facilitate development that is not of minimal environmental impact. A copy of the OEH advice to the Department is enclosed.

In light of the concerns raised by OEH, the Department is of the view that allowing water storage facilities as exempt development is not appropriate in the Port Stephens context. While it remains open to Council to determine how to proceed at this time, Council may consider whether a complying development approach may still achieve Council's planning objectives. Cessnock City Council utilises this approach and the provisions included in its LEP 2011 and accompanying DCP may provide a useful starting point for Council to consider. Should Council seek to pursue this approach, a Gateway alteration request accompanied with adequate supporting information should be submitted to the Department.

If you have any questions in relation to this matter, I have arranged for Mr Ben Holmes to assist you. Mr Holmes can be contacted on (02) 4904 2709.

Yours sincerely

3/3/2016
Monica Gibson
Director Regions, Hunter and Central Coast
Planning Services

Encl: OEH correspondence to DPE dated 1 March 2016



**Office of
Environment
& Heritage**

Our reference: DOC16/110431-1
Contact: Karen Thumm, 4927 3153

Monica Gibson
Director Regions, Hunter & Central Coast
Department of Planning and Environment
PO Box 1226
NEWCASTLE NSW 2300

Dear Ms Gibson

RE: PROPOSED AMENDMENT TO PORT STEPHENS LOCAL ENVIRONMENTAL PLAN TO ALLOW FOR WATER STORAGE FACILITIES TO BE INCLUDED IN SCHEDULE 2: EXEMPT DEVELOPMENT

I refer to a meeting on 24 February 2016 between the Department of Planning and Environment (DPE) and the Office of Environment and Heritage (OEH) regarding a planning proposal for the inclusion of water storage facilities in Schedule 2 of the Port Stephens Local Environmental Plan as exempt development. OEH has previously provided written advice on this matter to Port Stephens Council and a number of concerns were raised which have been discussed. The following advice clarifies OEH's position and also comments on advice sought by DPE on this matter from the Department of Primary Industries (DPI) Water.

OEH considers that farm dams are potentially of a bulk and scale that do not meet the essential criteria for exempt development which requires minimal environmental impact. OEH therefore objects to the inclusion of farm dams as exempt development. Neither the original proposal nor the amended proposal are supported. Our preferred position is that farm dams remain subject to the development application process where independent oversight and adherence to environmental and licensing requirements can be correctly assessed. Farm dams may require additional approvals via water harvesting licences, controlled activities approvals, and fisheries licences. The need for these is best assessed by leaving them within the development application process so that there is some independent appraisal of the proposal.

Whilst many farm dams may be constructed with minimal environmental impact this would not be the case for all farm dams. Putting the item into the exempt development category allows the proponent to make their own assessment of the degree of environmental impact and it would be very difficult to include sufficient safeguards to ensure that this is done correctly. For example, the requirement for a dam to have no impact on the adjoining property is very difficult to enforce with exempt development as it bypasses the approvals process.

The option of whether water storage facilities may be included as complying development has also been considered. OEH does not support this option either. However, if DPE wish to recommend that Port Stephens Councils considers the complying development option, OEH would suggest that the criteria currently developed for the exempt development consideration should be expanded to include the following additional provisions:

- no trees are to be removed or damaged as a result of dam construction
- the construction must comply with Council's Erosion and Sediment control requirements

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- the dam must not be built on a natural watercourse (with no specification as to the order of the watercourse or whether the watercourse is named, as in the Greater Taree City Council provisions)
- the dam must not exceed three mega-litres capacity (subject also to conformance with harvestable rights provisions).

Another restriction which is recommended to reduce the potential for irreversible damage to the environment, is to limit the outside wall to one metre height or less. Note that this is included in Cessnock City Council's provisions as it limits the risk if the dam fails. Cessnock City Council has farm dams in their exempt development list; however, they are smaller than those which would be permitted under the Port Stephens proposal. Cessnock City Council also has a comprehensive farm dam chapter as part of their Development Control Plan which provides considerable guidance.

The original Port Stephens planning proposal refers to a 'NSW Farm Dams Policy'. It is assumed that this is a reference to the Harvestable Rights Order, which regulates dam construction, but does not address clearing, erosion or sedimentation issues. Of particular concern is that the Harvestable Rights Order only covers larger watercourses. This does not alleviate OEH's concerns that some of the smaller watercourses could be supporting a diverse range of wetland communities which are unlikely to be protected by the proposed provisions and are likely to be endangered ecological communities. These communities are not necessarily characterised by trees, but can be sedges and shrubs. Under exempt development, Council will no longer be in a position to limit impacts on sensitive wetland areas as there will no longer be the requirement for dual consent.

OEH has reviewed the guidelines recommended by DPI Water to assist in the assessment process. The guidelines: 'The Farm Dams Handbook' (June, 2011) and 'Building a farm dam' (October, 2009) do not address the issues identified by OEH.

OEH is of the opinion that if farm dams are to be considered by a number of councils for inclusion in exempt or complying development a proactive approach to develop state-wide criteria would be the preferred approach.

If you have any enquiries concerning this advice, please contact Karen Thumm, Conservation Planning Officer, on 4927 3153.

Yours sincerely



1 MAR 2016

RICHARD BATH
Senior Team Leader Planning, Hunter Central Coast Region
Regional Operations