



Planning Proposal under section 55 of the EP&A Act

GRIFFITH CITY COUNCIL
Griffith Local Environmental Plan 2014
Amendment No.1

7 October 2014

Planning Proposal

This is a Planning Proposal prepared under section 55 of the *Environmental Planning and Assessment Act 1979*, in relation to a proposed amendment to Griffith Local Environmental Plan 2014 ("LEP 2014"). The proposal will be reviewed by Griffith City Council (at an ordinary meeting of Council), the NSW Department of Planning and Infrastructure, and (depending on the Gateway determination) used for public participation.

Background

Proposal

The purpose of this amendment is fourfold:

1. The Griffith Local Environmental Plan 2014 was gazetted by the Minister of Planning and Environment on 22 March 2014. The gazetted version of the LEP 2014 varied from that which was originally adopted by Griffith City Council and sent to the Department of Planning and Environment. In discussions with representatives from the Department it was suggested that the Plan was amended by a branch of the Department just prior to its gazettal. This planning proposal seeks to amend the LEP 2014 by amending several clauses back to the form original adopted by Griffith City Council and sent to the Department as part of the original planning proposal;
2. The planning proposal seeks to make a range of fairly minor amendments to the LEP 2014 to rectify anomalies, to update details and make minor mapping changes;
3. The planning proposal seeks to permit "Shops" within the B7 – Business Park zone; and
4. Amendments to the development standards of Clause 5.4 – Controls relating to additional permitted uses.

Property Details

Various properties throughout the entire Local Government Area

Applicant Details

Griffith City Council

Part 1 – Objectives and Intended Outcomes

The planning proposal seeks to rectify variations to the Griffith Local Environmental Plan 2014 which were applied by the Department after Council adoption of the Plan and prior to its gazettal. The proposal also seeks to rectify anomalies and errors, amend the development standards and provisions of Clause 5.4 and permit “Shops” within the B7 – Business Park Zone. The eight specific issues are listed in Appendix A.

Part 2 – Explanation of Provisions

The actual amendments to the Plan 2014 involve only textual amendments. The issues to which this Planning Proposal seeks to rectify are contained within Appendix ‘A’. The proposed amendments arising from the issues are provided for after the description and analysis of each issue under the heading “proposal” in Appendix ‘A’. There are no mapping amendments proposed by this Planning Proposal.

Part 3 – Justification

A – Need for the planning proposal

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

Yes. The Proposed Griffith Local Environmental Plan is supported by the “Griffith Land Use Strategy Beyond 2030” (Griffith LUS). This document was approved by Department of Planning and Infrastructure on 29 April 2013 and forms the strategic basis and framework for the Griffith Local Environmental Plan 2014 and the proposed amendments.

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

This planning proposal relates to several minor changes to Griffith Local Environmental Plan 2014, and the most appropriate means of amending an LEP through a planning proposal.

B - Relationship to strategic planning framework.

3. Is the planning proposal consistent with the objectives and action contained within the applicable regional or sub-regional strategy?

Not Applicable

4. Is the planning proposal consistent with the Local Council’s Community Strategic Plan, or other local strategic plan?

The planning proposal is consistent with the Griffith LUS and the Community Strategic Plan

5. Is the planning proposal consistent with applicable State Environmental Planning Policies?

The matters addressed by this planning proposal are consistent with all relevant SEPPs.

4. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

Yes. The planning proposal is consistent with the applicable Ministerial Directions. The majority of the proposed amendments formed part of the original planning proposal which was adopted by Council and sent to the Department of Planning and Environment. The remainder of the proposed amendment are minor in nature and are considered to be consistent with the Ministerial Directions.

C – Environmental, social and economic impact.

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

There is no likelihood that the matters addressed by this planning proposal would have any such adverse effect.

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

The matters addressed by this planning proposal are unlikely to have any adverse environmental effects.

9. How has the planning proposal adequately addressed any social and economic effects?

The matters addressed by this planning proposal have negligible social and economic effects.

D – State and Commonwealth interests.

10. Is there adequate public infrastructure for the planning proposal?

There is adequate public infrastructure for the matters addressed by this planning proposal.

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

The views of public authorities will not be sought until after the Gateway determination.

Part 4 – Mapping

The proposed amendment will not alter the content of any maps.

Part 5 – Community Consultation

The proposal is considered to be a low impact proposal, as it:

- is consistent with the pattern of surrounding land use zones and/or land uses,
- is consistent with the strategic planning framework,
- presents no issues with regard to infrastructure servicing,
- is not a principal LEP, and

- does not reclassify public land.

On this basis a 14 day public exhibition period is appropriate. The proposed consultation strategy in conjunction with the public exhibition for this proposal will be:

- Notification in a locally circulating newspaper.
- Notification on Council's website.

Part 6 – Project Timeline

This project timeline is based on anticipated dates and timeframes, though there can be unexpected delays. It is assumed that Council will have delegation to carry out certain plan-making functions.

1. Commencement – Gateway Determination by Department of Planning and Environment – October 2014
2. Amendments to Planning Proposal based on Gateway Determination – November 2014
3. Government Agency consultation (if required) – November 2014
4. Public Exhibition – November 2014
5. Consideration of Submissions – October 2014
6. Council to consider amended Planning Proposal – November 2014
7. Date of Submission to Department of Planning and Environment (should Council not be delegated the Ministers Plan Making functions) – November 2014
8. Date Council will make the Plan (should Council be delegated the Ministers Plan Making functions) – December 2014
9. Date Council will forward to the Department for notification – December 2014.

Figure 1 - Griffith Land Use Strategy Map

Unfortunately, there is no definition for “large scale shop” within the Standard Instrument which could be used to restrict the size of shops in the B7 zone. As such, Council proposes to permit a “shop” within the B7- Business Park zone and include a new zone objective to encourage appropriate large scale retail shops to locate between Crossing Street and Lenehan Road.

Lands Affected

All lands zoned B7 –Business Park within the Griffith LGA (Refer to Figure 2).

Proposal

- That “shops” be permitted in the B7 – Business Park Zone.
- That the following Zone objective be added to the Land Use Table under the B7 – Business Park Zone
 - To enable the location of large-scale retail uses within the zone.

Issue No. 2 – Amend Clause 4.1 (3A) – Minimum subdivision lot size

Clause as gazetted:

- (1) *The objectives of this clause are as follows:*
- (a) *to provide a minimum lot size for the subdivision of land,*
 - (b) *to ensure that subdivision does not unreasonably impact on the natural and environmental values of the area and will not lead to fragmentation of natural areas,*
 - (c) *to protect the productive capacity of agricultural land,*
 - (d) *to prevent the fragmentation of rural lands,*
 - (e) *to encourage a diversity of lot sizes, housing forms and densities in residential zones.*
- (2) *This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan.*
- (3) *The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.*
- (3A) *Despite subclause (3), each lot resulting from the subdivision of land identified as “Area A”, “Area B” or “Area C” on the Lot Size Map must be connected to a reticulated sewer and must be of a size that is not less than the area shown in Column 2 of the table to this subclause opposite the relevant area listed in Column 1.*

Column 1

Area A

Area B

Area C

Column 2

700 square metres

600 square metres

3,000 square metres

- (4) *This clause does not apply in relation to the subdivision of individual lots in a strata plan or community title scheme.*

Clause 4.1(3A) has been altered from the draft sent with Council’s Planning Proposal for the Griffith LEP 2014:

(4A) Despite subclause (3), the size of any lot resulting from the subdivision of land identified as “Area A”, “Area B” or “Area C” on the Lot Size Map and to be connected to a reticulated sewer must not be less than the area shown in Column 2 of the Table to this subclause opposite the relevant area.

Column 1

Area A
Area B
Area C

Column 2

700 square metres
600 square metres
3000 square metres

The wording of the Clause was derived from Mid-Western's and Wellington's LEP's. The intent of the Clause is to allow for one minimum lot size for subdivisions creating lots which will utilise AWTS units and another minimum lot size for subdivisions creating lots which will be connected to Council's reticulated sewer. As you can see in the minimum lot size map (Figure 2) below, reference is made to "Area C" "W" and it shows the red colour for 4,000 sq. m.. The purpose of the colour and the "W" is to establish the minimum lot size permitted for a lot which will not be connected to Council's reticulated sewer system. The "Area C" refers to Clause 4.1 of the LEP. As you can see by the blue outline, the entire area which is coloured red and references the size "W" is considered within "Area C". A member of the public would see that their lands are within "Area C" and turn to the gazetted Clause 4.1 which clearly states: *"each lot resulting from the subdivision of land identified as "Area A", "Area B" or "Area C" on the Lot Size Map must be connected to a reticulated sewer"*. The interpretation is that if subdivided, these lands have to be connected to reticulated sewer, which for most of the lots would mean a 100-200 metre extension of Council's sewer main and the installation of a pump station.

The wording of the clause above in red on the other hand gives a more clear interpretation of the intent of the clause.

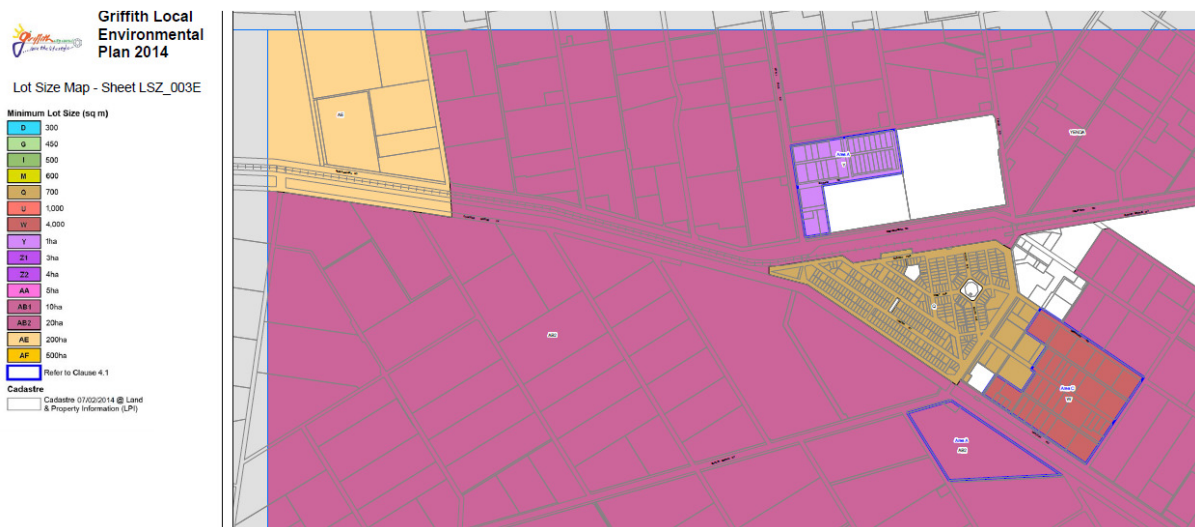


Figure 2: Representative Minimum Lot Size Map - Griffith

Lands Affected

All lands which are indicated as "Area A", "Area B" and "Area C" on the minimum lot size maps.

Proposal

That Clause 4.1(3A) be amended to the following:

Despite subclause (3), the size of any lot resulting from the subdivision of land identified as "Area A", "Area B" or "Area C" on the Lot Size Map and to be connected to a reticulated sewer must not be less than the area shown in Column 2 of the Table to this subclause opposite the relevant area.

Issue No. 3 – Amend Clause 4.1 (A) – Exceptions to minimum lot sizes for certain residential development

Clause as gazetted:

- (1) *The objective of this clause is to encourage housing diversity without adversely impacting on residential amenity.*
- (2) *This clause applies to development on land in Zone R1 General Residential.*
- (3) *Development consent may be granted to a single development application for development to which this clause applies that is both of the following:*
 - (a) *the subdivision of land into 2 or more lots,*
 - (b) *the erection of a dwelling house, an attached dwelling or a semi-detached dwelling on each lot resulting from the subdivision, if the size of each lot is equal to or greater than:*
 - (i) *for the erection of a dwelling house—400 square metres, or*
 - (ii) *for the erection of an attached dwelling—300 square metres, or*
 - (iii) *for the erection of a semi-detached dwelling—300 square metres.*

Clause 4.1A has been altered from the draft sent with Council's Planning Proposal for the Griffith LEP 2014:

- (1) *The objective of this clause is to encourage housing diversity without adversely impacting on residential amenity.*
- (2) *This clause applies to development on land in the following zones:*
 - (i) *Zone R1 General Residential*
- (3) *Despite any other provision of this Plan, development consent may be granted to the subdivision of land to which this clause applies if:*
 - (a) *multi dwelling housing or a dual occupancy is lawfully erected on the land, and*
 - (b) *the area of each resulting lot will not be less than:*
 - (i) *300 square metres for a semi-detached dwelling and an attached dwelling, or*
 - (ii) *400 square metres for a dwelling, and*
 - (c) *only one dwelling will be located on each lot resulting from the subdivision.*
- (4) *Development consent may be granted to a single development application for development to which this clause applies if:*
 - (a) *the subdivision of land into 2 or more lots, and*
 - (b) *the erection of a dual occupancy (attached), dual occupancy (detached) or multi dwelling housing if the size of each lot is equal to or greater than:*
 - (i) *300 square metres for a semi-detached dwelling and attached dwelling or*
 - (ii) *400 square metres for a dwelling, and*
 - (c) *only one dwelling will be located on each lot resulting from the subdivision.*

Council's intent for this clause is to permit reduced lot sizes for subdivisions involving:

- Existing multi dwelling or dual occupancy developments; or
- Proposed multi dwelling or dual occupancy developments.

The Clause as drafted in the version sent with Council's original Planning Proposal (in red above) clearly allows for each. 4.1(3) refers to existing development and 4.1(4) refers to proposed development. As an example, under Council's proposed clause, a person can submit a DA for the construction of three units on a vacant block and also the subdivision of those units as part of a single development application as long as the lot sizes meet the required standards. Also, under Council's proposed clause, a person who has an existing lot with three dwellings which were previously constructed with consent can also apply for a subdivision as long as the proposed lot sizes meet the standards.

Unfortunately, the gazetted Clause only permits someone to submit a development application which is for the subdivision of lands into 2 or more lots **and** the construction of a dwelling or dwellings. As such, the subdivision of existing multi dwelling and dual occupancy development is not covered by the clause.

Lands Affected

All lands zoned R1 General Residential.

Proposal

That Clause 4.1A be amended to the following:

- (1) The objective of this clause is to encourage housing diversity without adversely impacting on residential amenity.*
- (2) This clause applies to development on land in the following zones:
 - (i) Zone R1 General Residential**
- (3) Despite any other provision of this Plan, development consent may be granted to the subdivision of land to which this clause applies if:
 - (a) multi dwelling housing or a dual occupancy is lawfully erected on the land, and*
 - (b) the area of each resulting lot will not be less than:
 - (i) 300 square metres for a semi-detached dwelling and an attached dwelling, or*
 - (ii) 400 square metres for a dwelling, and**
 - (c) only one dwelling will be located on each lot resulting from the subdivision.**
- (4) Development consent may be granted to a single development application for development to which this clause applies if:
 - (a) the subdivision of land into 2 or more lots, and*
 - (b) the erection of a dual occupancy (attached), dual occupancy (detached) or multi dwelling housing if the size of each lot is equal to or greater than:
 - (i) 300 square metres for a semi-detached dwelling and attached dwelling or*
 - (ii) 400 square metres for a dwelling, and**
 - (c) only one dwelling will be located on each lot resulting from the subdivision.**

Issue No. 4 – Amend Clause 4.2(C) – Erection of dwelling houses and dual occupancies on land in certain rural and environmental protection zones.

There were several alterations made to this clause by the NSW Department of Planning and Environment after its adoption by Council. These alterations limit the clauses effectiveness, make it difficult to understand for the average resident and act to inadvertently prohibit uses which are permitted within the zone. As such Council seeks the clause be further amended to it's the form originally proposed in the Planning Proposal for the Griffith LEP 2014.

Clause as gazetted:

- (1) The objectives of this clause are as follows:
 - (a) to minimise unplanned rural residential development,*
 - (b) to enable the replacement of lawfully erected dwelling houses or dual occupancies in rural and environment protection zones.**
- (2) This clause applies to land in the following zones:
 - (a) Zone RU1 Primary Production,*
 - (b) Zone RU2 Rural Landscape,*
 - (c) Zone RU4 Primary Production Small Lots,**

- (d) Zone RU6 Transition,
 - (e) Zone E3 Environmental Management,
 - (f) Zone E4 Environmental Living.
- (3) Development consent must not be granted for the erection of a dwelling house or dual occupancy on land to which this clause applies unless the land:
- (a) is a lot that is at least the minimum lot size shown on the [Lot Size Map](#) in relation to that land, or
 - (b) is a lot created under an environmental planning instrument before this Plan commenced and on which the erection of a dwelling house or dual occupancy was permissible immediately before that commencement, or
 - (c) is a lot resulting from a subdivision for which development consent (or equivalent) was granted before this Plan commenced and on which the erection of a dwelling house or dual occupancy would have been permissible if the plan of subdivision had been registered before that commencement, or
 - (d) is an existing holding, or
 - (e) would have been a lot or a holding referred to in paragraph (a), (b), (c) or (d) had it not been affected by:
 - (i) a minor realignment of its boundaries that did not create an additional lot, or
 - (ii) a subdivision creating or widening a public road or public reserve or for another public purpose, or
 - (iii) a consolidation with an adjoining public road or public reserve or for another public purpose.

Note. A dwelling cannot be erected on a lot created under clause 9 of [State Environmental Planning Policy \(Rural Lands\) 2008](#) or clause 4.2.

- (4) Development consent must not be granted under subclause (3) unless:
- (a) no dwelling house or dual occupancy has been erected on the land, and
 - (b) if a development application has been made for development for the purpose of a dwelling house or dual occupancy on the land—the application has been refused or it was withdrawn before it was determined, and
 - (c) if development consent has been granted in relation to such an application—the consent has been surrendered or it has lapsed.
- (5) Development consent may be granted for the erection of a dwelling house or dual occupancy on land to which this clause applies if there is a lawfully erected dwelling house or dual occupancy on the land and the dwelling house or dual occupancy to be erected is intended only to replace the existing dwelling house or dual occupancy.

(6) In this clause:

existing holding means land that:

- (a) was a holding on 18 November 1998, and
- (b) is a holding at the time the application for development consent referred to in subclause (3) is lodged, whether or not there has been a change in the ownership of the holding since 18 November 1998, and includes any other land adjoining that land acquired by the owner since 18 November 1998.

holding means all adjoining land, even if separated by a road or railway, held by the same person or persons.

Note. The owner in whose ownership all the land is at the time the application is lodged need not be the same person as the owner in whose ownership all the land was on the stated date.

Clause 4.2C has been altered from the draft sent with Council's Planning Proposal for the Griffith LEP 2014:

(1) The objectives of this clause are as follows:

- (a) to minimise unplanned rural residential development, and

(b) to enable the replacement of lawfully erected dwelling houses in rural and environmental protection zones.

(2) This clause applies to land in the following zones:

Zone RU1 Primary Production

Zone RU2 Rural Landscape

Zone RU3 Forestry

Zone RU4 Primary Production Small Lots

Zone RU6 Transition

Zone E3 Environmental Management

Zone E4 Environmental Living

(3) Development consent must not be granted for the erection of a dwelling house or dual occupancy on a lot in a zone to which this clause applies, and on which no dwelling house or dual occupancy has been erected, unless the lot is:

(a) a lot that is at least the minimum lot size specified for that lot by the Lot size Map, or

(b) a lot created under an environmental planning instrument before this Plan commenced and on which the erection of a dwelling house or dual occupancy was permissible immediately before that commencement, or

(c) a lot resulting from a subdivision for which development consent (or equivalent) was granted before this Plan commenced and on which the erection of a dwelling house or dual occupancy would have been permissible if the plan of subdivision had been registered before that commencement or

(d) an existing holding, or.

Note. A dwelling or dual occupancy cannot be erected on a lot created under clause 9 of State Environmental Planning Policy (Rural Lands) 2008 or clause 4.2.

(e) a lot resulting from a subdivision for which development consent has been granted under clause 4.1D.

(4) Despite any other provision of this clause, development consent may be granted for the erection of a dwelling house or dual occupancy on land in a zone to which this clause applies if:

(a) it will wholly replace another dwelling or dual occupancy that was lawfully erected;

(b) the land would have been a lot or a holding referred to in subclause (3) had it not been affected by:

(i) a minor realignment of its boundaries that did not create an additional lot, or

(ii) a subdivision creating or widening a public road or public reserve or for another public purpose, or

(iii) a consolidation with adjoining public road, a public reserve or for another public purpose.

(5) In this clause:

existing holding means

(a) the area of a farm, lot, portion or parcel of land as it was at 18 November 1998, and

(b) if, as at 18 November 1998, a person or entity owned 2 or more adjoining or adjacent lots, portions or parcels of land, the combined area of those lots, portions or parcels as they were as at that date.

Issue 4(a) – Erection of dwellings on “Lot Averaging” lots

Clause 4.1B permits the subdivision of lands in the RU4, R5 and E4 zones using “lot averaging”. A lot of a smaller size to that shown on the Lot Size Map can be subdivided under this clause as long as the average area of the subdivided lots is equal to the minimum

lot size. It was the intention of Council that lots created under 4.1B would each have a dwelling entitlement.

The gazetted Clause does not appear to permit the erection of a dwelling on a subdivided lot to which Clause 4.1B (Lot Averaging) applies whereas the clause which was originally proposed as part of Griffith City Council's original planning proposal does (refer to 3(e) in red above).

Issue 4(b) – Prohibiting construction of an additional dwelling to create a dual occupancy

The wording of gazetted Clause 4.2C(4)(a) effectively prohibits a permitted land use being a dual occupancy. Dual occupancies are permissible with consent in the zones to which the clause applies. If a dwelling presently exists on a lot which meets the criteria of subclause 3, a further dwelling to create a dual occupancy cannot be erected due to wording of the gazetted subclause 4(a).

Issue 4(c) – Replacement Dwellings

Subclause 4.2C(5) has been totally re-worded and does not serve the purposes of the residents of Griffith. The proposed wording of the clause which permits the erection of a dwelling house which will *“wholly replace another dwelling or dual occupancy that was lawfully erected”*, is more appropriate for the Griffith LGA. The gazetted clause requires that the dwelling house has to be “existing” to replace it. However, Council is aware of several cases in which previously existing primary residences (old farm estate dwellings) have been demolished due to fire, flood, structural integrity etc. and the owner intended to replace the dwelling in the future but the demolition was required for safety reasons in the interim. The previous clause in the 2002 LEP permitted this: *“Nothing in this clause prevents a person, with development consent, from erecting a dwelling that will wholly replace another dwelling that was lawfully erected”*. The key word in the proposed clause to allow for the replacement of a previously existing dwellings is “was”.

Council would like to carry over the wording from the 2002 LEP into the 2014 Plan as previously proposed in the original Planning Proposal. Council has several “Dwelling Entitlement” letters on file in which advice has been provided indicated that a replacement dwelling is permitted on a subject lot which a previously existing dwelling was located. The gazetted clause does not permit the replacement of previously existing dwellings, only existing dwellings which is problematic for Council's purposes. To prove that a dwelling was lawfully erected, applicant's under the 2002 Griffith LEP could provide a building or development approval for the dwelling (for those constructed post 1966 - first Griffith IDO introduced) or for dwellings which were constructed prior to 1966 - an aerial photograph showing the location of the dwelling on the lot, written evidence from a utility supply company that a service was provided and a statutory declaration from a person which lived at the dwelling as a principle place of residence.

Issue 4(d) – Existing Holding definition

Subclause 4.2C(6) has been re-worded and Council believe that its meaning is difficult to interpret. The proposed definition of an “existing holding” provided in the draft LEP sent with the Planning Proposal was transferred from the 2002 LEP:

existing holding means

- (a) the area of a farm, lot, portion or parcel of land as it was at 18 November 1998, and*
(b) if, as at 18 November 1998, a person or entity owned 2 or more adjoining or adjacent lots, portions or parcels of land, the combined area of those lots, portions or parcels as they were as at that date.

As Council has not altered the date within the existing holding definition and Council has previously provided a substantial amount of advice to purchasing landowners regarding the erection of a dwelling on an existing holding, we do not believe that the definition should be altered to include other lands subsequently purchased by a landowner. Also the definition of a holding does not seem to relate to a corporate entity. As such, Council requests the use of the definition of an “existing holding” which was previously used in the Griffith LEP 2002.

Lands Affected

All lands zoned:

- (a) Zone RU1 Primary Production,*
- (b) Zone RU2 Rural Landscape,*
- (c) Zone RU4 Primary Production Small Lots,*
- (d) Zone RU6 Transition,*
- (e) Zone E3 Environmental Management,*
- (f) Zone E4 Environmental Living.*

Proposal

Griffith City Council proposes to amend Clause 4.2(C) to the form which was originally adopted by Griffith City Council and proposed to the NSW Department of Planning and Environment as part of Council LEP 2014 Planning Proposal:

- (1) The objectives of this clause are as follows:*
- (a) to minimise unplanned rural residential development, and*
 - (b) to enable the replacement of lawfully erected dwelling houses in rural and environmental protection zones.*
- (2) This clause applies to land in the following zones:*
- Zone RU1 Primary Production*
 - Zone RU2 Rural Landscape*
 - Zone RU3 Forestry*
 - Zone RU4 Primary Production Small Lots*
 - Zone RU6 Transition*
 - Zone E3 Environmental Management*
 - Zone E4 Environmental Living*
- (3) Development consent must not be granted for the erection of a dwelling house or dual occupancy on a lot in a zone to which this clause applies, and on which no dwelling house or dual occupancy has been erected, unless the lot is:*
- (a) a lot that is at least the minimum lot size specified for that lot by the Lot size Map, or*
 - (b) a lot created under an environmental planning instrument before this Plan commenced and on which the erection of a dwelling house or dual occupancy was permissible immediately before that commencement, or*
 - (c) a lot resulting from a subdivision for which development consent (or equivalent) was granted before this Plan commenced and on which the erection of a dwelling house or dual occupancy would have been permissible if the plan of subdivision had been registered before that commencement or*
 - (d) an existing holding, or.*

Note. A dwelling or dual occupancy cannot be erected on a lot created under clause 9 of State Environmental Planning Policy (Rural Lands) 2008 or clause 4.2.

(e) a lot resulting from a subdivision for which development consent has been granted under clause 4.1D.

(4) Despite any other provision of this clause, development consent may be granted for the erection of a dwelling house or dual occupancy on land in a zone to which this clause applies if:

(a) it will wholly replace another dwelling or dual occupancy that was lawfully erected;
(b) the land would have been a lot or a holding referred to in subclause (3) had it not been affected by:

(i) a minor realignment of its boundaries that did not create an additional lot, or

(ii) a subdivision creating or widening a public road or public reserve or for another public purpose, or

(iii) a consolidation with adjoining public road, a public reserve or for another public purpose.

(5) In this clause:

existing holding means

(a) the area of a farm, lot, portion or parcel of land as it was at 18 November 1998, and

(b) if, as at 18 November 1998, a person or entity owned 2 or more adjoining or adjacent lots, portions or parcels of land, the combined area of those lots, portions or parcels as they were as at that date.

Issue No. 5 – Home Based Child Care in E3 Environmental Management Zone

Zone E3 Environmental Management, includes “Home-based child care” as both permitted without consent and permitted with consent. It should only be considered permitted without consent. This is a drafting error of Council.

Lands Affected

All lands zoned E3 Environmental Management.

Proposal

To remove “Home-based child care” as permitted with consent in the Land Use Table under the E3 Environmental Management zone.

Issue No. 6 – Aboriginal places of heritage significance – Frog Hollow Address

The address of the Frog Hollow community camp site in Part 4 of Schedule 5 – Environmental heritage is incorrect. The property description, being Lot 1342 DP 751709 is correctly identified, however the address (Noorilla Street and Dickson Road) is incorrect. The address should refer to Noorla Street and Dickson Road.

Lands Affected

Lot 1342 DP 751709 – corner of Noorla Street and Dickson Road

Proposal

To correctly identify the Aboriginal place of heritage significance in Part 4 of Schedule 5 – Environmental Heritage as:

Locality	Item name	Address	Property description	Significance	Item no
Griffith	Frog Hollow (community camp site)	Noorla Street and Dickson Road	Lot 1342, DP 751709	Local	AH1

Issue No. 7 – Amending Clause 5.4 – Controls relating to miscellaneous permissible uses

The ongoing use of the Griffith LEP 2014 has resulted in the need to amend Clause 5.4 relating to miscellaneous permissible uses. The Clause has proven to be too restrictive to allow some of these uses to develop in Griffith.

Issue 7(a) - Farm stay Accommodation

Farm stay accommodation is presently restricted to 4 bedrooms under Clause 5.4(5). The Griffith LEP 2014 defines Farm stay accommodation as:

“a building or place that provides temporary or short-term accommodation to paying guests on a working farm as a secondary business to primary production.”

Farm stay accommodations are considered beneficial to farmers by providing an alternative income stream and also to the tourism industry of the city as they increase the diversity of lodging options in Griffith. There are two (2) registered farm stay accommodations in the Griffith Area, including:

- Corynnia Station, Hay – 9 Bedrooms
- Ingleden Park Farm Stay – 5 Bedrooms

A survey of other rural Council's development standards relating to bedroom restrictions revealed that Clause 5.4(5) in the Griffith LEP 2014 is considered restrictive as it only allows the use of 4 bedrooms within a Farm stay accommodation. A further review of accommodation listing sites including Stayz.com and VisitNSW.com revealed that the majority of Farm stay accommodations across New South Wales contained between 6 and 12 bedrooms.

The Griffith LGA is considered a predominantly agricultural (farming) community with hundreds of small, medium and large scale farming operations of different varieties. Several farming operations contain a number of farm cottages which could be converted to Farm stay accommodations. There are considered to be several farming and rural lifestyle experiences which tourists could have on the variety of farms in Griffith. To support the start-up and financial viability of farm stay accommodations in Griffith it is proposed to increase the amount of bedrooms permitted in such a land use to twelve (12).

Lands Affected

All lands zoned to permit “Farm stay accommodations”

Proposal

To increase the amount of bedrooms permitted in a Farm stay accommodation from four (4) to twelve (12) under Clause 5.4(5) Farm stay accommodation in the Griffith LEP 2014.

Issue 7(b) – Home Businesses

Clause 5.4(2) requires that *“If development for the purposes of a home business is permitted under this Plan, the carrying on of the business must not involve the use of more than 40 square metres of floor area.”* This development standard has proven to be too restrictive for some potential applicants wishing to run a business from their homes. Griffith is predominantly comprised of single family dwellings on large blocks with ancillary buildings such as domestic sheds. The average size of a new dwelling in Griffith is over 200 sq. m. Thus, the existing development standard only allows the use of a fifth of the average new dwelling. It is important for Council to support such land uses and live-work arrangements as the start-up costs are low for residents, workers do not have to commute to their place of employment and it supports employment for workers which are also care givers

The development application process would assess if the business is appropriate in the residential setting and ensure that the dwelling remains the dominant land use. As such, restricting home businesses to such a small floor area limits the potential businesses which could be carried out in a dwelling without a planning rationale. Therefore it is appropriate to increase the floor area which can be occupied by a home business and rely on the merit based assessment in the development application process to gauge the appropriateness of carrying out a certain type of business in a certain area of a dwelling.

A review of other regional Council's LEP's suggests that a floor area of between 60 and 100 sq. m. is commonly used. Wagga Wagga's LEP has increased the floor area to 100 sq. m. from the standard 40 sq. m.. This would allow residents to use up to half of the average size dwelling for their business. It is expected that the majority of home businesses will occupy less than this floor area, however, should the use of upwards of 100 sq. m. of a dwelling be considered to have merit during the development application process, the development standard should allow for it.

Lands Affected

All lands zoned to permit “Home businesses”

Proposal

To increase the amount of floor area permitted to be used by a Home business from 40 square metres to 100 square metres, under Clause 5.4(2) Home businesses in the Griffith LEP 2014.

Issue 7(c) – Home Industries

Similar to the analysis and conclusions provided in Issue 7(b) above and to maintain a cohesive standard relating to live-work permissibility, the amount of floor area permitted to be used by Home industries is proposed to increase to 100 square meters.

Lands Affected

All lands zoned to permit “Home industries”.

Proposal

To increase the amount of floor area permitted to be used by Home industries from 80 square metres to 100 square metres, under Clause 5.4(3) Home industries in the Griffith LEP 2014.

Issue No. 8 – Water reticulation systems prohibited in RU5 – Village zone.

Water reticulation systems are permissible with or without consent in all zones except the RU5 – Village zone. This is considered a drafting error and “Water reticulation systems” should be permitted with consent in the RU5 zone.

Lands Affected

All lands zoned RU5 - Village

Proposal

To remove “Water reticulation systems” as prohibited in the Land Use Table under the RU5 – Village zone and add the use as permitted with consent in the zone

Appendix 'B' – Council Report and Resolution

GRIFFITH CITY COUNCIL **REPORT**

CL05

SUBJECT: PLANNING PROPOSAL - AMENDMENT NO. 1 - GRIFFITH LOCAL ENVIRONMENTAL PLAN 2014

FROM: Kelly McNicol, Coordinator Landuse, Planning & Compliance

SUMMARY

The purpose of this report is to seek Council's endorsement of the Planning Proposal related to Amendment No. 1 of the Griffith Local Environmental Plan 2014 (GLEP 2014) and facilitate the proposal being sent to the Department of Planning and Environment for gateway determination. A request will also be made to the Department of Planning and Environment that the Plan Making functions for the amendment be delegated back to Council. The Planning Proposal in Attachment 'A' was foreshadowed in a report presented to Council on 22 July 2014 and represents the first proposed amendment to the GLEP 2014.

The Planning Proposal seeks to rectify variations to the Griffith Local Environmental Plan 2014 which were applied by the Department after Council adoption of the Plan and prior to its gazettal. The proposal also seeks to rectify some minor anomalies and errors, amend the development standards and provisions of Clause 5.4 and permit "Shops" within the B7 – Business Park Zone which was proposed by way of a resolution of Council at the 27 May 2014 Ordinary Meeting.

RECOMMENDATION

- (a) Council formally endorse the Planning Proposal (Griffith Local Environmental Plan 2014 - Amendment No.1) prepared in accordance with section 55 of the Environmental Planning and Assessment Act 1979 and provided in Attachment 'A'.**
- (b) The Planning Proposal be forwarded to the Minister requesting a gateway determination in accordance with section 56 of the Environmental Planning and Assessment Act 1979 and requesting that Council be delegated the Plan Making functions for the amendments related to the Planning Proposal under Section 59(2) and (3) of the Environmental Planning and Assessment Act 1979.**
- (c) Council give the Director of Sustainable Development delegated authority to act in Council's interest in finalising the Planning Proposal (Griffith Local Environmental Plan 2014 - Amendment No.1) for public exhibition if any minor changes are required.**
- (d) Following the Gateway Determination, the Planning Proposal (Griffith Local Environmental Plan 2014 - Amendment No.1) be placed on public exhibition for a**

period of 28 days unless major changes are required by the Department of Planning and Infrastructure.

In accordance with the Local Government Act (section 375A - Recording of voting on planning matters) Council must record the Councillor's vote in relation to this matter.

Councillor	For	Against
Cr Dal Broi		
Cr Napoli		
Cr Lancaster		
Cr Thorpe		
Cr Balind		
Cr Zappacosta		
Cr Neville		
Cr Croce		
Cr Curran		
Cr Cox		
Cr Rossetto		
Cr Stead		

BACKGROUND

On 22 March 2014 the Griffith Local Environmental Plan was gazetted by the Department of the Planning and Environment. After its gazettal, Council staff noted a number of alterations to the plan which were made by the Department's Legal branch at the last minute without notifying Council staff. The Plan which was originally adopted by Council and sent to the Department differed to that which was gazetted, the main differences relating to certain details about minimum lot sizes, certain details relating to dual occupancy development, the definition of an existing holding and erection of dwellings on lots created by the "lot averaging" clause.

Council staff contacted the Department regarding these alterations and it was suggested that a Planning Proposal be prepared to amend the LEP to the form which was originally sent to the Department. Other minor errors and anomalies which have been identified since GLEP 2014 gazettal have also been proposed to be amended in the Planning Proposal provided in Attachment 'A'.

Further, at the 27 May 2014 Ordinary Meeting of Council, the following was resolved by Council:

(a) That the Griffith Local Environment Plan 2014 (GLEP 2014) be amended to remove "shop" as a prohibited development within Zone B7 Business Park.

(b) That the General Manager or his nominee do all things, carry out such public consultation or notifications as may be required and sign all documents to make any necessary applications to the Department of Planning or any other authority that may be required to so amend the GLEP 2014 without delay.

Council staff have packaged all of the above amendments into one Planning Proposal (refer to Attachment 'A'). These amendments are regarded as minor in nature and it is expected that the Department will make a favourable gateway determination and delegate plan making functions back to Council. An approximate timeline of the amendment is as follows:

- I. Commencement – Gateway Determination by Department of Planning and Environment – October 2014
- II. Amendments to Planning Proposal based on Gateway Determination – October 2014
- III. Government Agency consultation (if required) – November 2014
- IV. Public Exhibition – November 2014 (28 Days)
- V. Consideration of Submissions – November 2014
- VI. Council to consider amended Planning Proposal – December 2014
- VII. Date of Submission to Department of Planning and Environment (should Council not be delegated the Ministers Plan Making functions) – December 2014
- VIII. Date Council will make the Plan (should Council be delegated the Ministers Plan Making functions) – December 2014 / January 2015
- IX. Date Council will forward to the Department for notification – January 2015.

OPTIONS

OPTION 1

- (a) Council formally endorse the Planning Proposal (Griffith Local Environmental Plan 2014 - Amendment No.1) prepared in accordance with section 55 of the Environmental Planning and Assessment Act 1979 and provided in Attachment 'A'.
- (b) The Planning Proposal be forwarded to the Minister requesting a gateway determination in accordance with section 56 of the Environmental Planning and Assessment Act 1979 and requesting that Council be delegated the Plan Making functions for the amendments related to the Planning Proposal under Section 59(2) and (3) of the Environmental Planning and Assessment Act 1979.
- (c) Council give the Director of Sustainable Development delegated authority to act in Council's interest in finalising the Planning Proposal (Griffith Local Environmental Plan 2014 - Amendment No.1) for public exhibition if any minor changes are required.
- (d) Following the Gateway Determination, the Planning Proposal (Griffith Local Environmental Plan 2014 - Amendment No.1) be placed on public exhibition for a period of 28 days unless major changes are required by the Department of Planning and Infrastructure.

OPTION 2

- a) Any other resolution of Council.

STATUTORY IMPLICATIONS

a) Policy Implications

Amending the Griffith Local Environmental Plan 2014 in accordance with the Griffith Land Use Strategy - Beyond 2030.

b) Financial Implications

Not Applicable

c) Legal/Statutory Implications

Not Applicable

CONSULTATION

Department of Planning and Environment, Senior Management Team, Director of Sustainable Development, Manager of Planning and Environment

STRATEGIC LINKS

a) Growth Strategy Plan

Not Applicable

b) Corporate/Business Plan

Council's Delivery Program - D6.3 - Implement the strategies identified in the Land Use Strategy.

ATTACHMENTS

(a) Planning Proposal under section 55 of the EP&A Act - Griffith Local Environmental Plan 2014 Amendment No. 1

DRAFT RESOLUTION

0309

0309

RESOLVED on the motion of Councillors Zappacosta and Lancaster that:

(a) Council formally endorse the Planning Proposal (Griffith Local Environmental Plan 2014 - Amendment No.1) prepared in accordance with section 55 of the Environmental Planning and Assessment Act 1979 and provided in Attachment 'A'.

(b) The Planning Proposal be forwarded to the Minister requesting a gateway determination in accordance with section 56 of the Environmental Planning and Assessment Act 1979 and requesting that Council be delegated the Plan Making functions for the amendments related to the Planning Proposal under Section 59(2) and (3) of the Environmental Planning and Assessment Act 1979.

(c) Council give the Director of Sustainable Development delegated authority to act in Council's interest in finalising the Planning Proposal (Griffith Local Environmental Plan 2014 - Amendment No.1) for public exhibition if any minor changes are required.

(d) Following the Gateway Determination, the Planning Proposal (Griffith Local Environmental Plan 2014 - Amendment No.1) be placed on public exhibition for a period of 28 days unless major changes are required by the Department of Planning and Infrastructure.

In accordance with the Local Government Act (section 375A - Recording of voting on planning matters) Council must record the Councillor's vote in relation to this matter.

Councillor	For	Against
Cr Dal Broi	X	
Cr Napoli	Vacated the Chamber	
Cr Lancaster	X	
Cr Thorpe	Vacated the Chamber	
Cr Balind	X	
Cr Zappacosta	X	
Cr Neville	Leave of Absence	
Cr Croce	X	
Cr Curran	X	
Cr Cox	X	
Cr Rossetto		X
Cr Stead	X	