

Planning and Assessment

IRF19/6163

Gateway determination report

LGA	Griffith
PPA	Griffith City Council
NAME	Myall Park zone and minimum lot size boundary change between E2 Environmental Conservation and RU2 Rural Landscape (1 home, 0 jobs)
NUMBER	PP_2019_GRIFF_001_00
LEP TO BE AMENDED	Griffith Local Environmental Plan 2014
ADDRESS	1413 Rankins Springs Road, Myall Park
DESCRIPTION	Lot 6 DP 1133395
RECEIVED	19 February 2019, adequate 19 September 2019
FILE NO.	IRF19/6163
POLITICAL DONATIONS	There are no known donations or gifts to disclose and a political donation disclosure is not required.
LOBBYIST CODE OF CONDUCT	There have been no known meetings or communications with registered lobbyists with respect to this proposal.

1. INTRODUCTION

1.1 Description of planning proposal

Planning proposal to amend the Griffith Local Environmental Plan 2014 for a zone and minimum lot size boundary adjustment between E2 Environmental Conservation and RU2 Rural Landscape. The boundary adjustment will affect a single lot, being Lot 6 DP 1133395 and will not change the amount of land zoned E2 or RU2. The boundary adjustment will allow for a dwelling to be built in a previously cleared section of the current E2 zone, subject to development consent.

1.2 Locality and site description

The subject site is approximately 11km north-east of the Griffith CBD (**Figure 1**). The site is one of a strip of rural lifestyle blocks along Rankins Springs Road, which is located between McPherson Range (an area of high conservation value) and productive horticultural land (**Figure 2**). The southern lots of McPherson Range have a split land use between rural residential and environmental protection while the northern lots are split between environmental protection and agricultural production. The northern RU2 lots still have potential to be further subdivided and converted from agricultural to rural lifestyle use, however, this would deviate from the area's local strategic intent.

Lot 6 DP 1133395 covers approximately 6ha and has a dwelling entitlement within the RU2 zone part of the lot. The subject site rises in elevation to the west creating a sloping lot which provides scenic views of the horticultural land to the east. The subject site contains two native vegetation communities, varying from high to low quality, depending on previous land use disturbance levels.

1.3 Existing planning controls

The subject site has several LEP provisions applying to it including:

- The western portion is zoned E2 Environmental Conservation with no Minimum Lot Size (MLS). The E2 zone is a closed zone which does not permit any type of 'residential accommodation'.
- The eastern portion is zoned RU2 Rural Landscape with a MLS of 4ha. The RU2 zone is a closed zone which permits multiple types of 'residential accommodation' with consent.
- The RU2 zoned part of the lot is approximately 3.8ha, which is 95% of the 4ha MLS. Therefore, council can provide consent for a 'dwelling house' to be erected on the RU2 portion of the lot through a clause 4.6 standard development variation to clause 4.2C.
- The entire lot is mapped as having terrestrial biodiversity value in the Griffith LEP 2014.
- The western portion of the lot is mapped as bushfire prone land (**Figure 3**).



Figure 3: Bushfire prone mapping of the subject site. Red is Vegetation Category 1 and the highest risk for bushfire. Yellow is a 100m vegetation buffer around Category 1.

1.4 Summary of recommendation

Proceed with condition – The zone boundary alignment was correct at the time of drafting the LEP as it matched the high value vegetation areas. Due to past non-permitted clearing, the biodiversity values of the E2 zone area to become RU2 has been lost. Clearly defining the habitat values lost from the cleared area is a timely and difficult procedure. Given the scale of the development and proposed boundary adjustment will not reduce the area of land zoned E2, continuing with the proposal as submitted is the best method to achieve the objectives of the proposal and avoid further environmental impact.

2. PROPOSAL

2.1 Objectives or intended outcomes

The objectives of the proposal are to change the planning controls of a portion of Lot 6 DP 1133395 to enable a 'dwelling house' to be permissible with consent on the land. The planning controls to be amended are the zone and MLS as shown in **Figure 4**. The boundary alignment has changed in response to consultation with the then Office of Environment and Heritage (OEH) (now Biodiversity Conservation Division) since the planning proposal was originally submitted. Therefore, the planning proposal will need to be amended to reflect the updated boundary alignment (as per **Figure 4**) before community consultation.

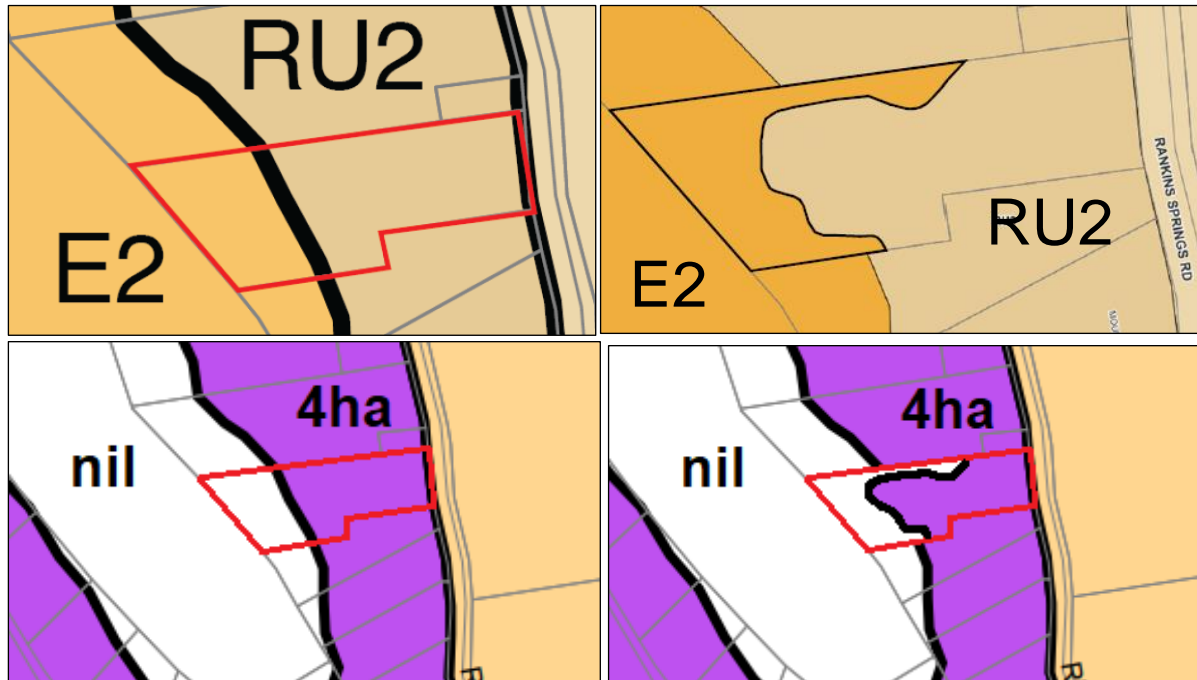


Figure 4: Existing (left) and proposed (right) boundary alignments. Top row: Zone. Bottom Row: lot size.

2.2 Explanation of provisions

The proposed boundary adjustment will facilitate erection of a dwelling which is prohibited on the E2 zone and permitted with consent on the RU2 zoned land. At the time of making the LEP, the zone boundary roughly followed the tree line of the high-quality extent of native woodlands (**Figure 5**). The current landholders purchased the lot on 9 September 2016 and approximately 0.2ha of native vegetation in the E2 zone was cleared later that year in preparation for constructing a dwelling (**Figure 5**). No permit was issued for this clearing as it is prohibited development in the E2 zone.

Initially OEH did not support the rezoning while there was outstanding consent and remediation issues, and the proposal could occur on existing RU2 land without reducing the area of land zoned for E2 Environmental Protection. Extensive consultation with OEH and Council has occurred between March and September 2019 to resolve these concerns. On 26 June 2019 OEH advised Council to amend the proposal to maintain or increase the area of land zoned E2 and for the non-permitted clearing be included in any future development assessment for a dwelling house on the lot. An amended rezoning proposal was submitted on 17 September 2019 which ensured there was no loss of E2 zoned land (**Figure 6**) and OEH have confirmed they no longer object to the proposal.



Figure 5: Comparison of native vegetation cover pre and post clearing to the E2 boundary.



Figure 6: Visual representation of exchange of E2 and RU2 land, showing the boundary adjustment will not result in a change in area zoned for E2 or RU2.

The objectives of the E2 zone are to:

- Protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.
- Prevent development that could destroy, damage or otherwise have an adverse effect on those values.
- Ensure the long term viability of populations of threatened species and ecological communities by protecting and improving the condition of wildlife habitats.

At the time of making the LEP, the zone boundary accurately mapped the high ecological values of the site, which in turn met the objectives of the zone. Clearing in preparation for a dwelling should not have occurred as it prohibited in the zone and is in direct opposition to the objectives of this zone. Nevertheless, the ecological values of the 0.2ha of cleared land have been lost and the imperative to continue to protect this land and uphold the objectives of the zone are questionable. The proposed boundary adjustment to permit a dwelling in the cleared area, in exchange for protecting adjacent and contiguous, high value native vegetation is proposed. Protecting the high value ecological values of the lot is encouraged as it will protect the area from future degradation from development and is consistent with the objectives of the zone.

The objectives of the RU2 zone are to:

- Encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
- Maintain the rural landscape character of the land.
- Provide for a range of compatible land uses, including extensive agriculture.

The proposal is consistent with the existing rural lifestyle blocks along Rankins Springs Road. While the erection of a dwelling for a rural lifestyle block doesn't encourage sustainable primary industry, it is consistent with the Griffith Land Use Strategy (LUS) and will maintain the rural landscape character of the land.

2.3 Mapping

The planning proposal will amend the land zoning map LZN_003 and lot size map LSZ_003 to reflect the updated zone and MLS boundary alignment (**Figure 4**).

3. NEED FOR THE PLANNING PROPOSAL

A 'dwelling house' is permitted with consent in the RU2 zone. Therefore, the intent of the planning proposal could be achieved without any amendments to the Griffith LEP if the 'dwelling house' was located within the existing RU2 zone. As the location of the 'dwelling house' is intended for the cleared section of the E2 zone, a planning proposal is the only method to permit this development.

4. STRATEGIC ASSESSMENT

4.1 State

There is no known state strategic planning framework relevant to this planning proposal.

4.2 Regional / District

The Riverina Murray Regional Plan 2036 (RMRP) is a relevant regional strategy to the planning proposal. Direction 15 of the RMRP is to protect and manage the region's many environmental assets. Specifically, the following actions are relevant:

- **Action 15.1** – Protect high environmental value assets through local plans.
- **Action 15.2** – Minimise potential impacts arising from development in area of high environmental value, and consider offsets or other mitigation mechanisms for unavoidable impacts.

The planning proposal seeks to amend the zone and minimum lot size boundary to exchange protection of low value (cleared) native vegetation for high value vegetation. This will reduce the development potential and therefore protect the high value native vegetation through amending LEP controls. Therefore, the proposal is consistent with the RMRP.

4.3 Local

The subject site is identified multiple times for specific purposes in the Griffith LUS 'Beyond 2030'. Map 7 shows the remnant vegetation areas of the subject site as either least concern or endangered vegetation. This is reflected in the ecological constraints assessment of the subject site and is discussed in more detail in section 5.2 of this report.

Map 44 shows the long-term general planning for Griffith city and its surrounds. The entire lot is considered for 'large lot residential expansion on land already zoned appropriately', with the caveat that lots are to be at least 5ha. The planning proposal is consistent with this approach.

The future land uses for Myall Park map (**Figure 7**) shows the current zone boundary alignment of subject site matches the Griffith LUS. Therefore, the strategic and legislative intent of the zone boundaries is to protect the high conservation value of McPherson Range. Ideally the existing zone boundary should be maintained to align with the Griffith LUS. However, due to prohibited clearing, an opportunity has arisen to protect existing high value vegetation in exchange for the vegetation which has been cleared. While the boundaries between the Griffith LUS and LEP will become misaligned from this proposal, they will both achieve the same intent of protecting the high conservation value areas of Myall Park.

The Griffith LUS acknowledges Myall Park's main purpose is for primary agriculture, with a smaller southern area of large lot residential land with highly valued scenic, agricultural views. The limited capacity for servicing and land use conflict of residential to rural and environmental areas restricts the area for increased residential density. The strategic intent of this area is to prevent future subdivision for residential purposes. The proposal is already subdivided for rural residential uses and has connectivity to all services except for reticulated sewage. Erecting a dwelling on the subject lot aligns with the overall local strategic intent for Myall Park.

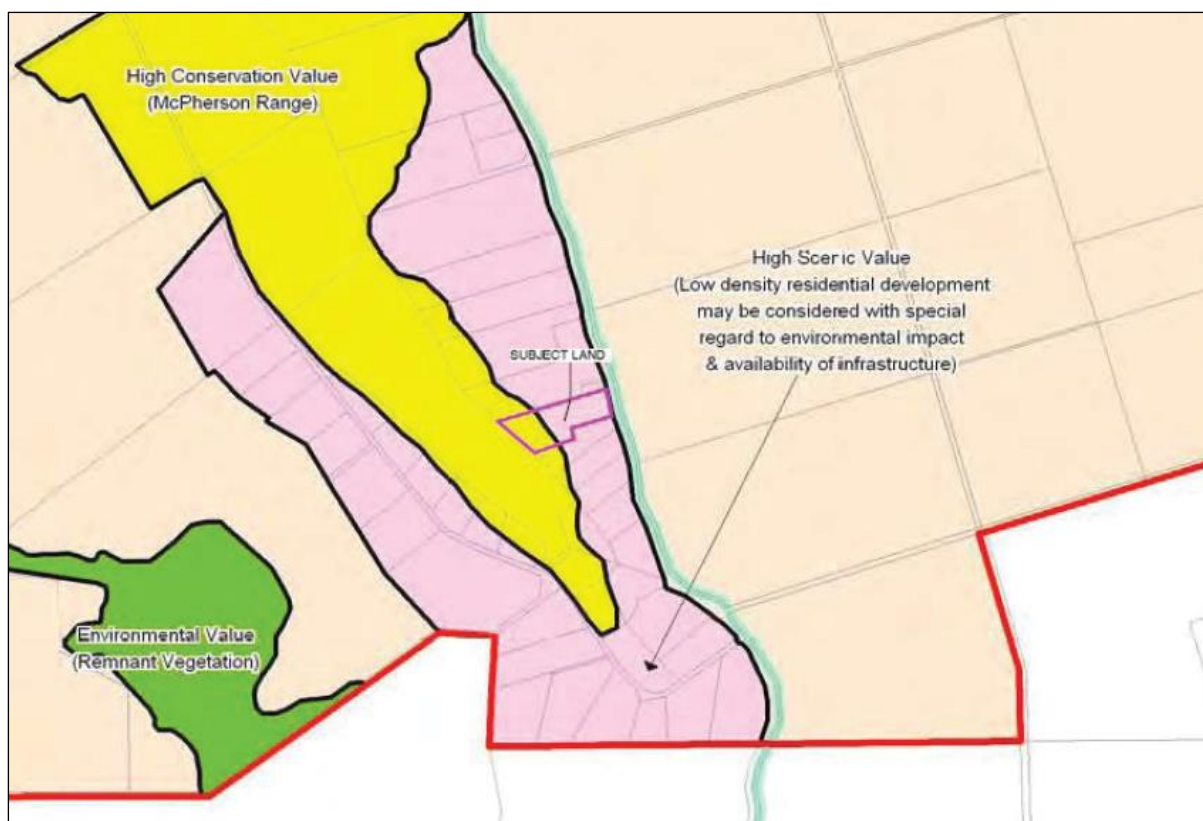


Figure 7: Extract of subject site from the Griffith Land Use Strategy, 'Beyond 2030'.

4.4 Section 9.1 Ministerial Directions

Direction 1.2 Rural Zones

This Direction applies as the proposal will amend the zone boundary of a rural zone. The objective of this Direction is to protect the agricultural production value of rural land. As the proposal will not reduce the amount of rural zoned land (**Figure 6**) and will enable permissible development with consent, the proposal is considered consistent with this Direction.

Direction 1.3 Mining, Petroleum Production and extractive Industries

This Direction applies as the proposal will alter the zone boundary of E2 land which prohibits mining and other extractive activities. The inconsistency with this Direction is considered justified as the zone boundary adjustment is of minor significance and will not result in a change in the amount of land where mining and extractive activities are prohibited (**Figure 6**).

Direction 1.5 Rural Lands

This Direction applies as the proposal will alter the zone boundary of E2 and RU2 land. The main objectives of this Direction are to protect agricultural land from fragmentation and incompatible uses and encourage sustainable and economic use of rural land. The proposal is consistent with this Direction as the proposal is consistent with the RMRP 2036, ensures protection of higher value vegetation in exchange for use of lower value vegetation by realigning the E2 and RU2 zone boundary and will not exacerbate land use conflict with nearby agricultural activities.

Direction 2.1 Environment Protection Zones

The original proposal resulted in a loss of E2 zoned land, which was inconsistent with this Direction. Consultation with the then OEH recommended the proposal be amended to ensure there is a gain or no net loss of E2 zoned land. The amended zone boundary (**Figure 6**) has met the requirements of OEH. The proposal is now consistent with this Direction as it protects higher value vegetation and does not reduce the environmental protection standards that apply to the land.

Direction 2.3 Heritage Conservation

The proposal states an Aboriginal Heritage Information Management System search identified no record of Aboriginal sites in or near the subject site. The proposal is not expected to adversely impact environmental heritage significance and is consistent with this Direction.

Direction 4.4 Planning for Bushfire Protection

The subject site includes Category 1 bushfire prone vegetation (**Figure 3**). Council will be required to consult with the NSW Rural Fire Service (RFS) to resolve the inconsistency with this Direction.

Direction 5.10 Implementation of Regional Plans

The RMRP is the relevant regional strategy to the planning proposal. As outlined in section 4.2 of this report, the planning proposal is consistent with Direction 15 of the RMRP and therefore, this Direction.

4.5 State environmental planning policies (SEPPs)

The proposal is consistent with the relevant SEPPs.

The proposal is consistent with the aims of *State Environmental Planning Policy (Primary Production and Rural Development) 2019* to balance the needs of primary production, residential development and protection of biodiversity. The proposal will meet this aim by maintaining the areas of RU2 and E2 zoned land through a zone boundary adjustment to permit a dwelling on a cleared section of the lot.

5. SITE-SPECIFIC ASSESSMENT

5.1 Social

A minor zone boundary adjustment on one private property is not expected to have a noticeable impact on the local community.

5.2 Environmental

Across the Griffith LGA, only 6% of native vegetation remains. These remaining vegetated areas are restricted to rocky ridgelines, road corridors, lowland depressions and swamps. Due to the limited habitat availability in the LGA, McPherson Range is locally important habitat to a variety of native species. This is evidenced by the frequency of threatened species sightings across McPherson Range on BioNet. Therefore, any further loss or degradation of habitat values should be carefully assessed.

A preliminary ecological constraints assessment was completed for the proposal which did not include a test of significance, as this required further seasonal survey and assessment. The preliminary assessment identified multiple threatened species

which may use habitat of the subject site. It also identified two native Plant Community Types (PCTs) on the lot (**Figure 8**):

- PCT 82: Western Grey Box – Poplar Box – White Cypress Pine tall woodland on red loams mainly of the eastern Cobar Peneplain Bioregion.
- PCT 185: Dwyer's Red Gum – White Cypress Pine – Currawang shrubby woodland mainly in the NSW South Western Slopes Bioregion.



Figure 8: Extract from Biosis *Ecological constraints assessment at 1413 Rankin Springs Road, Myall Park*, August 2018. Showing vegetation quality of the subject site ranging from good to low, and original proposed rezoning.

PCT 82 is associated with State and Commonwealth listed Threatened Ecological Communities (TECs). However, the preliminary assessment found the subject site vegetation did not meet the scientific determination of these TECs as Grey Box (*Eucalyptus microcarpa*) was not the most characteristic tree species.

The preliminary assessment found the amendment of the zone boundary and associated residential development would not be ecologically constrained. This decision was based on the condition of the land at the time which was post clearing. Council staff also completed a site assessment and supported the proposal continue as submitted, to rezone the cleared area to RU2. Council found the overall environmental impact of the proposal would be greater if the dwelling and shed had to be relocated on the current RU2 land and clear additional vegetation.

Ideally the pre-emptive clearing would not have occurred in the protected E2 zone and an accurate assessment of the merits of the zone boundary adjustment could occur. Clearly defining the habitat values lost from the cleared area is a timely and difficult procedure. Given the scale of the development and the proposed zone boundary adjustment will not reduce the area of land zoned E2, continuing with the proposal as submitted is the best method to achieve the objectives of the proposal and avoid further environmental impact.

5.3 Economic

The lot is serviced with reticulated water, electricity, telecommunications and roads. Sewage treatment will be supplied and assessed through the development application process. Any economic impacts would be restricted to the private owners of the proposal.

6. CONSULTATION

6.1 Community

A 28-day public consultation period with no public hearing has been suggested for this proposal. This is supported given the proposal does not meet the requirements for a reduced exhibition period or a public hearing.

6.2 Agencies

No agency consultation has been proposed by Council for this proposal. Agency consultation with the previous OEH (now BCD) has already occurred to resolve inconsistencies with section 9.1 Direction 2.1 Environment Protection Zones. Further agency consultation will be required with RFS to resolve section 9.1 Direction 4.4 Planning for Bushfire Protection.

7. TIME FRAME

The proposed time frame for completing the LEP is six months. It is recommended for a 12 month timeframe to be issued to account for additional time required for agency consultation.

8. LOCAL PLAN-MAKING AUTHORITY

Council has requested to be the local plan-making authority. Council have no interests in the land and should be authorised to be the local plan-making authority.

9. CONCLUSION

Preparation of the planning proposal is supported to proceed with conditions. Conditions are based around the need for community and agency consultation, updates to the planning proposal and delegation for council to be the local plan-making authority. There are no outstanding inconsistencies with local, regional or state strategic planning as the boundary adjustment is of minor significance. Consultation with RFS should resolve the outstanding inconsistency with section 9.1 Direction 4.4 Planning for Bushfire Protection.

10. RECOMMENDATION

It is recommended that the delegate of the Secretary:


1. agree that any inconsistencies with section 9.1 Directions (1.3 Mining, Petroleum Production and extractive Industries and 2.1 Environment Protection Zones) are minor or justified; and
2. note that the consistency with section 9.1 Direction 4.4 Planning for Bushfire Protection is unresolved and may require justification.

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

1. Before community consultation, update the planning proposal to detail:
 - (a) Amended zone and minimum lot size boundary alignment.
 - (b) Updated section 9.1 Ministerial Directions and State Environmental Planning Policies.

2. Public exhibition is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:
 - (a) the planning proposal must be made publicly available for a minimum of **28 days**; and
 - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 6.5.2 of *A guide to preparing local environmental plans* (Department of Planning and Environment, 2018).
3. Consultation is required with the NSW Rural Fire Service (RFS) under section 3.34(2)(d) of the Act, to comply with the requirements of the section 9.1 Direction 4.4 Planning for Bushfire Protection. RFS is to be provided with a copy of the planning proposal and any relevant supporting material, and given at least 21 days to comment on the proposal.
4. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
5. The planning proposal authority is authorised as the local plan-making authority to exercise the functions under section 3.36(2) of the Act subject to the following:
 - (a) the planning proposal authority has satisfied all the conditions of the Gateway determination;
 - (b) the planning proposal is consistent with section 9.1 Directions or the Secretary has agreed that any inconsistencies are justified; and
 - (c) there are no outstanding written objections from public authorities.
6. Prior to submission of the planning proposal under section 3.36 of the Act, the final LEP maps must be prepared and be compliant with the Department's 'Standard Technical Requirements for Spatial Datasets and Maps' August 2017.
7. The time frame for completing the LEP is to be **12 months** following the date of the Gateway determination.

Garry Hopkins
Acting Team Leader, Western Region

 2.10.19
Wayne Garnsey
Acting Director, Western Region
Planning and Assessment

Assessment officer: Nikki Pridgeon
Planning Officer, Western Region
Phone: 5852 6800