

CLAUSE	CL04
TITLE	Planning Proposal 5/2018(1) Lot 6 DP 113395
FROM	Phil Harding, Director Sustainable Development
TRIM REF	19/62023

SUMMARY

A planning proposal has been received from Habitat Planning on behalf of their clients Derek and Rebecca Goullet (land owners at Lot 6 DP 1133395 Mountain View Rd Myall Park), seeking a minor change to Griffith Local Environmental Plan 2014 (LEP) that will allow a zoning boundary change where it splits the subject allotment, to the E2 Environmental Conservation Zoning.

The purpose of this report is for Council to re-endorse the Planning Proposal (set out in Attachment “A” Council report 13 November 2019) and, if endorsed, delegate to Director Sustainable Development the authority to submit the Planning Proposal to the Department of Planning and Environment for a gateway determination. The gateway approval will enable Council to progress with the intended amendment to the LEP and give effect to the planning proposal.

The following is a brief summary of the process:

- **Planning Proposal** – a planning proposal has been prepared seeking amendments to Griffith Local Environmental Plan 2014.
- **Gateway Determination** – subject to Council resolution the planning proposal is referred to the Department of Planning and Environment, whereby the Minister or their delegate decides whether or not the planning proposal can proceed, either with or without variation.
- **Community Consultation** – the gateway determination will set down procedural requirements in respect to community consultation which is a minimum of 28 days. The Minister will also advise whether or not public authorities are to be consulted.
- **Assessment** – that Council will review any public submissions, including any made by a public authority. The assessment will be referred to Parliamentary Counsel for preparation of the draft LEP.
- **The making of the LEP** – that upon review of Parliamentary Counsel and subsequent approval by the Minister, the amendments to the local environmental plan are published and come into effect.

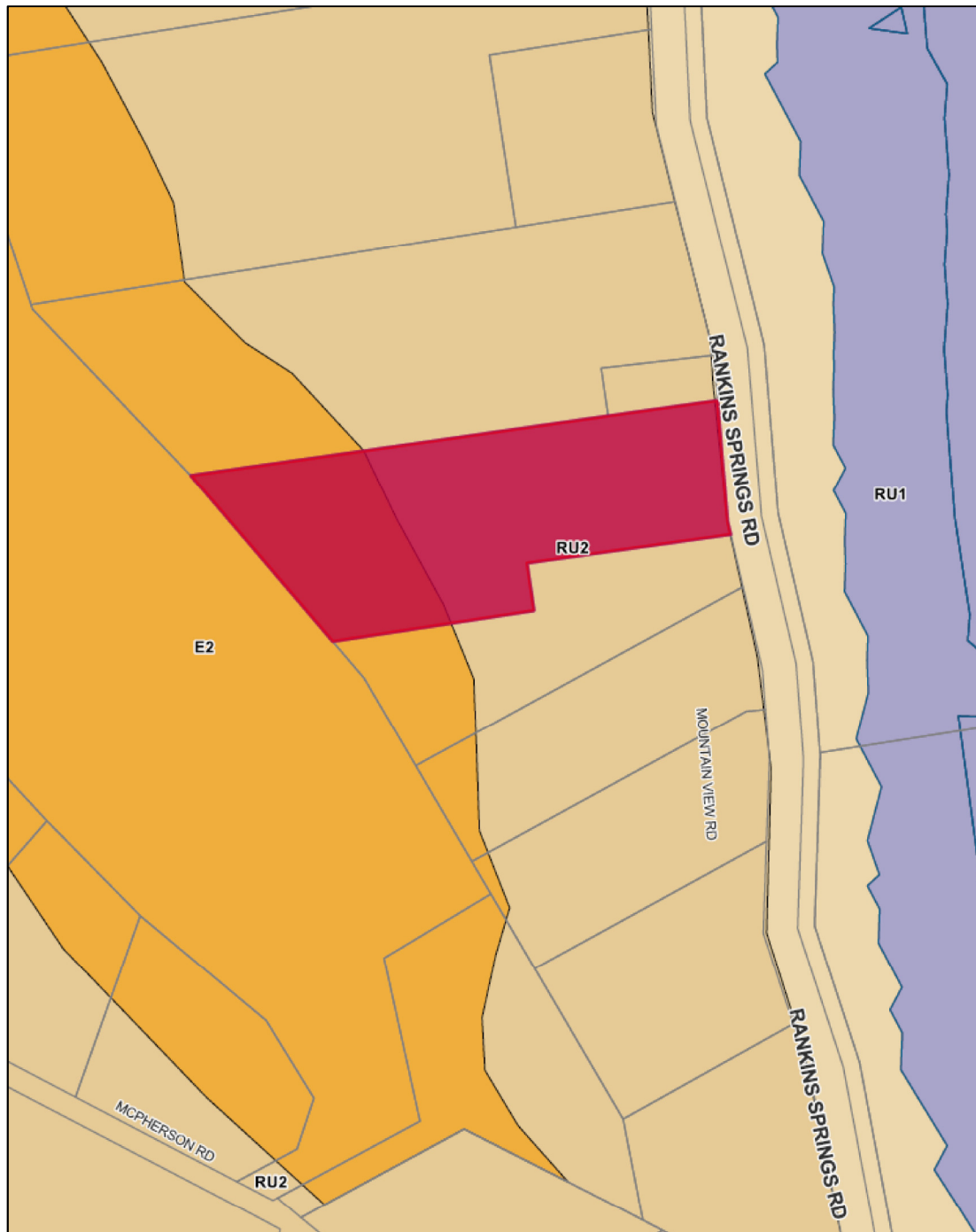
RECOMMENDATION

- (a) **Council endorse Planning Proposal 5/2018 set out in Attachment A that seeks amendment to Griffith Local Environmental Plan 2014 to make adjustments to an E2 Zoning boundary on Lot 6 DP 1133395.**
- (b) **Council give delegated authority to the Director Sustainable Development to submit the Planning Proposal to the Department of Planning and Environment to seek a Gateway Determination.**

- (c) Should Gateway approval be granted by the Department of Planning & Environment the Planning Proposal be placed on public exhibition for community consultation as directed by the Gateway Determination and where identified consult with any relevant public authority.**
- (d) If any submissions are received, Council considers such before the proposal is re-submitted to the Department of Planning and Environment for consideration and final assessment.**

REPORT

The planning proposal relates to Lot 6 DP 1133395, 47 Mountain View Rd Myall Park identified in the zoning plan extract below:



The land subject of the planning proposal is presently zoned E2 Environmental Conservation and also RU2 Rural landscape. The zone boundary change is to do with realignment of the E2 boundary and for this zone the Land Use Table of Griffith LEP 2014 states:

1 Objectives of zone

- *To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.*
- *To prevent development that could destroy, damage or otherwise have an adverse effect on those values.*

- *To ensure the long term viability of populations of threatened species and ecological communities by protecting and improving the condition of wildlife habitats.*

2 Permitted without consent

Water reticulation systems

3 Permitted with consent

Boat launching ramps; Boat sheds; Community facilities; Eco-tourist facilities; Environmental facilities; Environmental protection works; Flood mitigation works; Information and education facilities; Jetties; Oyster aquaculture Recreation areas; Research stations; Roads; Water recycling facilities; Water supply systems

4 Prohibited

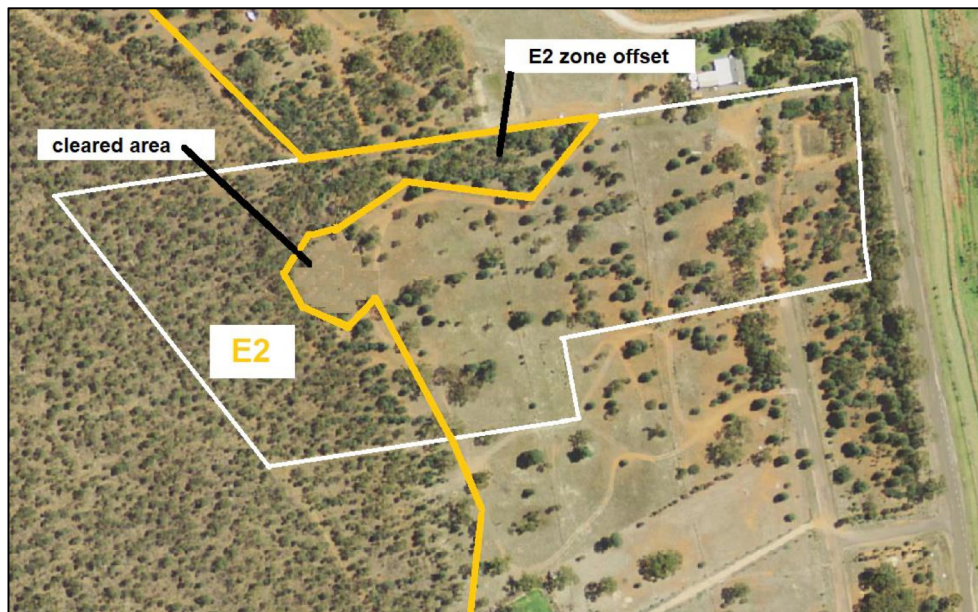
Business premises; Hotel or motel accommodation; Industries; Multi dwelling housing; Pond-based aquaculture; Recreation facilities (major); Residential flat buildings; Restricted premises; Retail premises; Seniors housing; Service stations; Tank-based aquaculture; Warehouse or distribution centres; Any other development not specified in item 2 or 3

This matter was previously reported to Council on 13 November 2018 and the mapping and specific peculiarities of the site and recent actions of clearing and a prior application for a dwelling that precipitated this Planning Proposal, are discussed at length.

Council did seek Gateway Determination from the Department of Planning in line with Council's resolution, however this was not forthcoming as the Department of Planning & Environment did require Council to initially liaise on the matter with the Office of Environment and Heritage. After a detailed series of exchanges and involving the land owner, a compromise position was put whereby a further offset of additional environmental land upon the allotment will lead to maintaining or increasing the spacial extent of E2 lands. In short, the owner is prepared to have the E2 zone boundary adjustment include lands previously not protected by E2 zoning, in offset to that cleared by error.



Current approximate E2 zone over aerial image



The intent of the amendment is to enable development (being a dwelling) to be permissible in the cleared area. The matters pertaining to compliance actions sit outside of this request and have been worked through with the Office of Environment and Heritage who are now satisfied the offsetting of similar or more area of appropriate land is to be included within the E2 zone, will occur. In writing to Council, OEH have withdrawn their objection to the Gateway Process, subject to the additional E2 land proposed, being included, and that the cleared land form part of any Biodiversity Offset area that may be required under the Biodiversity Conservation Act 2016 for Development Applications made into the future on this land.

Council staff are now confident that the major issue arising with this Planning Proposal has now been resolved to the satisfaction of the applicable NSW Government Agency (OEH) and also to the satisfaction of the NSW Department of Planning & Environment. Council staff are now confident the application is in a form that should receive Gateway Determination. Staff have prepared this report to Council to inform it of the process undertaken, and the changes made to resolve this matter.

The changes to the Local Environmental Plan can be achieved by amending Map LZN_003 of Griffith LEP 2014 in line with the above diagrams for the change in alignment of the E2 zone through the subject allotment

OPTIONS

OPTION 1

As per recommendation.

OPTION 2

Any other resolution of Council.

POLICY IMPLICATIONS

The proposed planning proposal will not result in an amendment to the Griffith Land Use Strategy: Beyond 2030.

FINANCIAL IMPLICATIONS

There are no significant financial implications to Council arising from the recommendations in this report.

LEGAL/STATUTORY IMPLICATIONS

Griffith Local Environmental Plan 2014 is an environmental planning instrument for the purpose of the Environmental Planning and Assessment Act, 1979 and it provides the statutory provisions whereby Council establishes the zoning of land and the means for identifying permissible land uses. A planning proposal is a lawful mechanism that enables Council to consider amendments to its environmental planning instrument for land uses that are otherwise prohibited within a zone.

ENVIRONMENTAL IMPLICATIONS

The planning proposal does not negate the need for proper studies, including traffic impact studies, to be undertaken as part of the development application process.

COMMUNITY IMPLICATIONS

Not applicable

LINK TO STRATEGIC PLAN

This item links to Council's Strategic Plan item 6.2 Promote opportunities to assist existing businesses to grow.

CONSULTATION

Senior Management Team

Director of Sustainable Development

Manager Planning & Environment

ATTACHMENTS

- (a) Planning Proposal Report 13th November 2018 [↓](#)

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Griffith City Council**REPORT****CLAUSE** CL03**TITLE** Planning Proposal 5/2018 - Lot 6 DP 1133395**FROM** Steven Parisotto, Coordinator Land Use Planning & Compliance**TRIM REF** 18/92133

SUMMARY

A planning proposal has been received from Habitat Planning on behalf of the land owner which seeks a minor change to Griffith Local Environmental Plan 2014 (LEP). The change sought is an adjustment to the zoning boundary that splits Lot 6 DP 1133395 so as to enable a dwelling to be erected upon the land.

The purpose of this report is for Council to endorse the Planning Proposal (set out in Attachment (a)) and, if endorsed, to delegate to Director Sustainable Development the authority to submit the Planning Proposal to the Department of Planning and Environment for a gateway determination. The gateway approval will enable Council to progress with the intended amendment to the LEP and give effect to the planning proposal.

The following is a brief summary of the process:

- **Planning Proposal** – a planning proposal has been prepared seeking amendments to Griffith Local Environmental Plan 2014.
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- **Assessment** – that Council will review any public submissions, including any made by a public authority. The assessment will be referred to Parliamentary Counsel for preparation of the draft LEP.
- **The making of the LEP** – that upon review of Parliamentary Counsel and subsequent approval by the Minister, the amendments to the local environmental plan are published and come into effect.

RECOMMENDATION

- (a) That Council endorse Planning Proposal 5/2018 set out in Attachment (a) that seeks amendment to Griffith Local Environmental Plan 2014 to amend the zoning boundary that splits Lot 6 DP 1133395; and
- (b) That Council give delegated authority to the Director Sustainable Development to submit the Planning Proposal to the Department of Planning and Environment to seek a Gateway Determination; and

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- (c) That should Gateway approval be granted by the Department of Planning & Environment the Planning Proposal be placed on public exhibition for community consultation, and where identified consult with any relevant public authority; and
- (d) If any submissions are received, Council considers such before the proposal is re-submitted to the Department of Planning and Environment for consideration and final assessment.

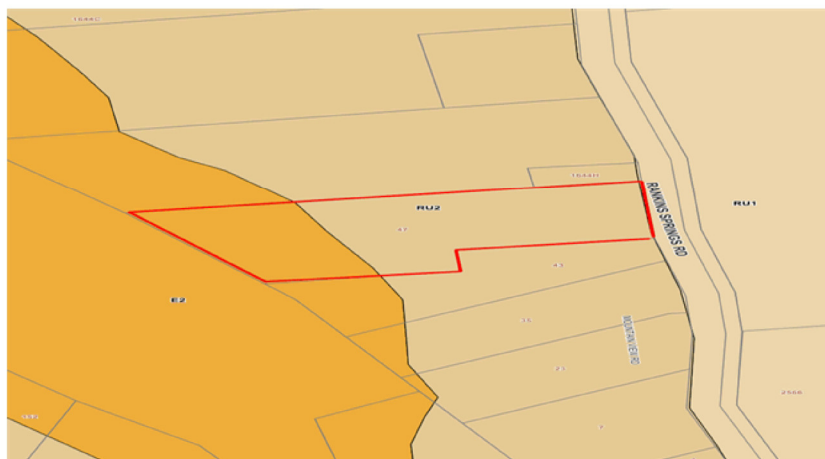
REPORT

The precursor to the planning proposal being prepared is linked to the assessment of a development application. On 3 October 2017 Council received Development Application No. 201/2017 to erect a dwelling on Lot 6 DP1133395 and in evaluating the application it was determined that the proposed dwelling was being sited within that part of the site zone E2 Environmental Conservation. The applicant was duly advised that under the current provisions of GLEP Council had no mechanism in which to approve the development and invited the applicant to withdraw the development application which otherwise would have been refused. During the course of the assessment of the development application Council advised that it would consider a planning proposal that would have the effect of permitting a dwelling on a cleared portion of the site within the current E2 zone.

Habitat Planning have subsequently prepared a planning proposal seeking to amend Griffith Local Environmental Plan 2014 (GLEP) to make a minor adjustment to a zone boundary that will facilitate the appropriate siting of a dwelling on Lot 6 in DP1133395 which is currently vacant.

The extract from the land use map of GLEP below identifies the current zoning of the land which is split between an RU2 Rural Landscape and an E2 Environmental Conservation zone. Under the provisions of GLEP the subject lot has a dwelling entitlement on the basis that the minimum lot size requirements, however the zoning of the land restricts the location of the dwelling to within the RU2 zone. It should be noted that under the previous environmental planning instrument (Griffith LEP 2002) the whole of the site was zoned Non-Urban 1(c) Rural Residential and dwellings were permissible anywhere within the lot.

Figure 1: Extract from Griffith LEP 2014 (Zone Boundaries)



It should be noted that at the historical aerial image overlays (from 2016) indicate the tree line at that time aligned with the current zoning boundary as shown in Figure 2 below.

Figure 2: Aerial Image from 2016 with Zone boundary shown



Since purchasing the land, it is understood the current landowners have cleared approximately 0.2ha in anticipation of constructing of a dwelling on the site and to provide access to elevated lands. Clause 7.2 of the Biodiversity Conservation Regulation 2017 allows some clearing of native vegetation on land under certain thresholds without consent – based on the size of the lot up to 0.5ha could be cleared without consent.

Should the planning proposal be supported it will require an amendment to the zoning map which will result in the zoning boundary following the tree line along the upper section of Lot 6 DP 1133395. The applicant in their planning proposal (p.10) has identified the proposed adjustment to the zoning boundary which is set out in the Figure 3 below.

Figure 3: Aerial Image from 2018 with proposed zone boundary shown



CL03 Planning Proposal 5/2018 - Lot 6 DP 1133395

Given that one of the objectives of the E2 zone seek to protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values the proposed zoning boundary will require minor realignment. The purpose of this will help protect two existing natural drainage lines. The changes would see part of the existing RU2 zoned land along the northern boundary be zoned E2 and part of the current E2 zoned land near the centre of the site maintained. These changes can be included as part of the mapping amendments.

Part of the subject site has been mapped as being bushfire prone land which the proponent for the planning proposal has duly acknowledged in their submission. The bushfire assessment acknowledges that any future dwelling will have to be designed in accordance with the Rural Fire Service's requirements set out in their publication *Planning for Bushfire Protection*.

OPTIONS

OPTION 1

As per recommendation.

OPTION 2

Any other resolution of Council.

POLICY IMPLICATIONS

The proposed planning proposal will not require any amendment to the Griffith Land Use Strategy: Beyond 2030.

FINANCIAL IMPLICATIONS

There are no significant financial implications to Council arising from the recommendations in this report.

LEGAL/STATUTORY IMPLICATIONS

Griffith Local Environmental Plan 2014 is an environmental planning instrument for the purpose of the Environmental Planning and Assessment Act, 1979 and it provides the statutory provisions whereby Council establishes the zoning of land and the means for identifying permissible land uses. A planning proposal is a lawful mechanism that enables Council to consider amendments to its environmental planning instrument for land uses that are otherwise prohibited within a zone.

ENVIRONMENTAL IMPLICATIONS

The environmental implications have been considered in the studies provided by Biosis Pty Ltd as part of their planning proposal and internal comments provided. This does not negate the need for any additional studies that may be required as part of development application assessment process.

COMMUNITY IMPLICATIONS

The community expectation is that the Ministerial directions provided by Section 9.1 of the Environmental Planning and Assessment Act, 1979. These directions provide planning principles which need to be considered when making decisions of land.

CL03 Planning Proposal 5/2018 - Lot 6 DP 1133395

LINK TO STRATEGIC PLAN

This item links to Council's Strategic Plan item 9.1 Encourage considered planning, balanced growth and sustainable design.

CONSULTATION

Senior Management Team, Director Sustainable Development, Manager Planning & Environment

ATTACHMENTS

- (a) Planning Proposal for Lot 6 DP 1133395 (Adjustment to Zoning Boundary)
(under separate cover)