

Planning Services

IRF18/6853

Gateway determination report

LGA	Griffith
PPA	Griffith City Council
NAME	Reduction of Minimum Lot Size at Boorga Rd, Nericon (114 homes, 0 jobs)
NUMBER	PP_2018_GRIFF_003_00
LEP TO BE AMENDED	Griffith Local Environmental Plan 2014
ADDRESS	Boorga Rd, Nericon
DESCRIPTION	Lot 309 DP751743, Lot 610 DP751743, Lot 102 DP1018460 and part Lot 104 DP1018460 (south of West Road)
RECEIVED	01 November 2018, adequate 9 October 2019
FILE NO.	IRF18/6853
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

Description of planning proposal

Amendment of the Griffith Local Environmental Plan 2014 to reduce the Minimum Lot Size (MLS) from 5ha to 1ha at Boorga Rd, Nericon of Lot 309 DP751743, Lot 610 DP751743, Lot 102 DP1018460 and Part Lot 104 DP1018460.

To facilitate subdivision of Part Lot 104 DP1018460, which will continue to retain a split MLS of 1ha and 200ha, a clause to permit subdivision to 1ha on the R5 part of the lot will also be required. The exact mechanism will be determined with Parliamentary Counsel at the drafting stage.

Site description

The subject site is located approximately 7km north-west of Griffith CBD and is zoned for R5 Large Lot Residential (**Figure 1**). The site is at the furthest extent of the Griffith residential expansion area and wraps around the northern edge of Lake Wyangan. The subject site is cleared, except for adjacent remnant vegetation along the boundary of the lots and is currently used for cropping (**Figure 2**).

Existing planning controls

The subject site is zoned R5 Large Lot Residential, with a MLS of 5ha. Provisions for a reduced MLS of 3000m² exist for the subject site (Clause 4.1 of Griffith LEP 2014) if the lot is connected to a reticulated sewer. Subdivision to 3000m² would facilitate the construction of 400 lots.

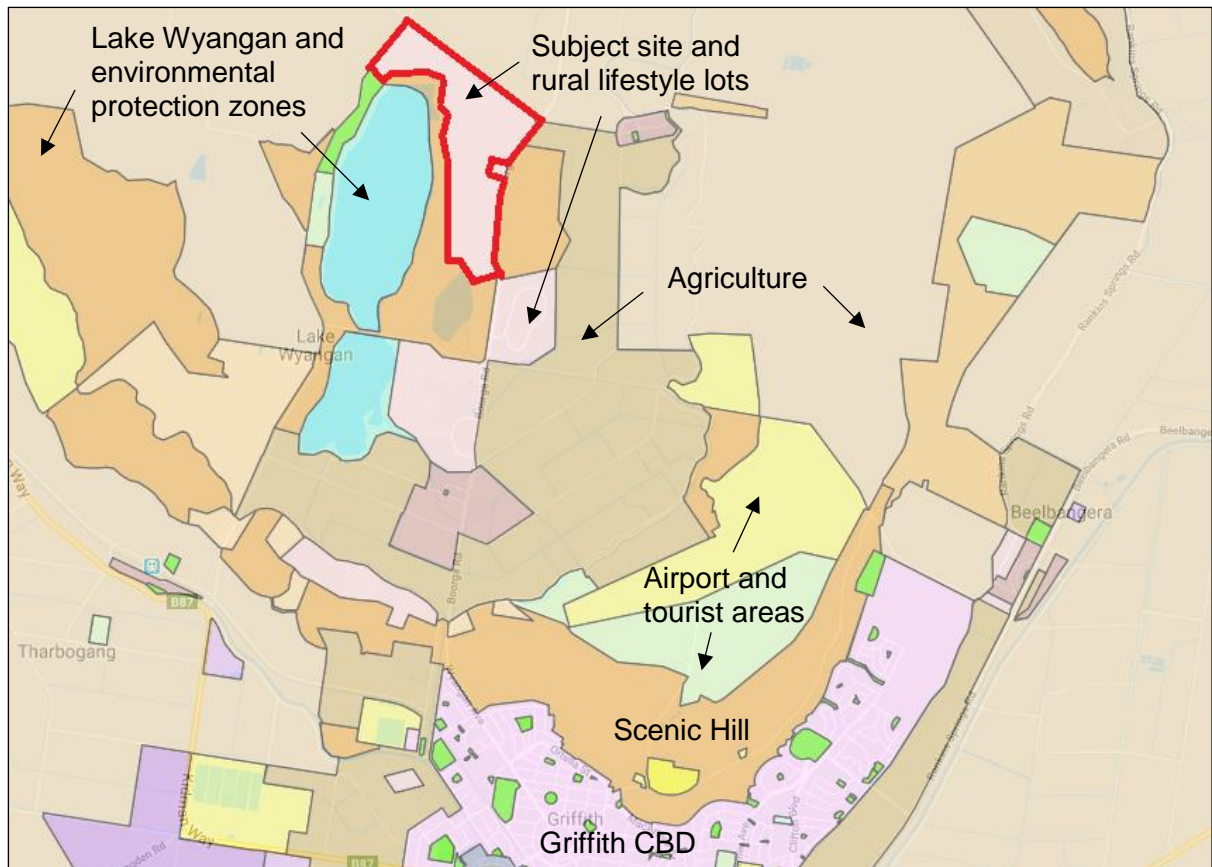


Figure 1: Land zoning of the subject site (red outline) and Griffith



Figure 2: Aerial imagery of the subject site

Surrounding area

The subject site is located on the outer urban fringe, north-west of Griffith (**Figure 3**). Areas immediately surrounding the subject site are for agricultural, environmental protection and rural lifestyle purposes. As shown in **Figure 3**, most of land surrounding Griffith is for agriculture.



Figure 3: Aerial imagery of surrounding area and proximity of the subject site to Griffith

Summary of recommendation

Proceed with condition – The proposal has strategic merit as it is consistent with the Griffith Land Use Strategy, which is approved by the Department, and Community Strategic Plan. However, as outlined in Council's planning report, there are several unresolved environmental concerns related to the suitability of the land to support increased residential density without connection to reticulated sewer. Given these unresolved issues, delegation to make the plan has been retained by the Department until these concerns are adequately resolved. Council may reapply for delegation to make the plan once these concerns are resolved.

2. PROPOSAL

Objectives or intended outcomes

The objective of the proposal is to facilitate a higher density of housing on R5 Large Lot Residential, by reducing the MLS from 5ha to 1ha. This will increase the potential lot yield from 34 to 114 lots, without the restriction of having to connect to a reticulated sewer system.

Explanation of provisions

Changing the MLS from 5ha to 1ha will be achieved by changing the MLS mapping as described below. The provisions for further subdivision if connected to reticulated sewer in Clause 4.1 of Griffith LEP 2014 are to be retained.

Currently the Griffith LEP 2014 does not contain a split MLS standard development clause to permit subdivision of lots with a split MLS to the lower MLS development standard. Without such a clause, the eventual subdivision of this proposal would be complicated as it could not meet the 200ha MLS requirements as per Clause 4.1(3) (see **Figure 4**). Adoption of a split MLS clause such as clause 4.1B of the Tamworth Regional Local Environmental Plan 2010 is not appropriate at this stage as it would affect the entire Griffith LGA. Council will investigate the appropriateness of adopting a split MLS clause during their LEP review. To facilitate subdivision for this proposal it is recommended for a site specific clause to be included in this LEP amendment to facilitate subdivision of the R5 part of Lot 104 DP1018460 to 1ha. The exact mechanism to achieve the subdivision can be resolved at the legal drafting stage through discussions with Legal and Parliamentary Counsel.

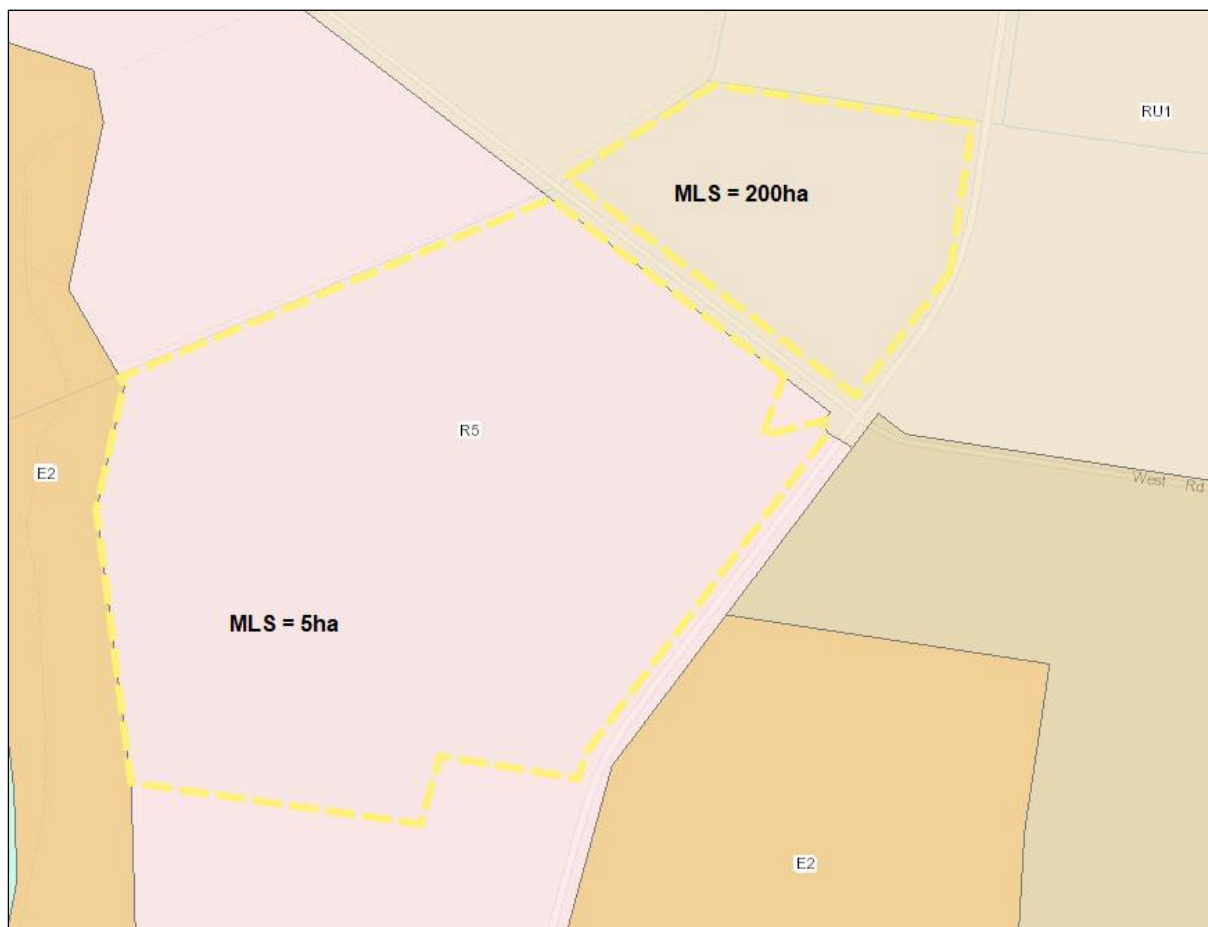


Figure 4: Existing zone and MLS provisions applying to Lot 104 DP1018460.

Mapping

Lot Size Map - Sheet LSZ_003B will require alteration to show the subject site has a MLS of 1ha.

3. NEED FOR THE PLANNING PROPOSAL

Proponents' assessment

The proponent currently has development approval to construct 34 lots on the subject site (DA 95/2017), using the lot averaging rules. The proponent does not intend to subdivide to 3000m² given the cost of installing sewer infrastructure and abundance of 3000-5000m² rural residential allotments in Griffith. The proponent states there is a need for 1ha lots in Griffith and intends to reduce the MLS of the subject site to fill this market requirement. Amendment of the Griffith LEP 2014 to reduce the MLS to 1ha is the only method of achieving the 1ha lots without installing sewer infrastructure.

Councils' assessment

Council staff and Councillors supported the proposal, however, had unresolved concerns regarding the potential impact of Aerated Wastewater Treatment Systems (AWTS) on Lake Wyangan. Council have resolved to undertake further assessment of the suitability of 1ha lots to support an AWTS at the development approval stage. Council did not provide any comment on the need for additional housing or impact of 1ha on strategic land use planning. A summary of Council's concerns is provided:

- An AWTS installed on these soil types have potential to generate sub-surface hydraulic flows downslope and generate off site contamination of nearby environmentally sensitive water bodies. Lake Wyangan and Campbell's Swamp are subject to important International and Australian water bird treaties.
- The subject site already contains saline soil and additional salt loadings from the AWTS could exacerbate the issue on and off site.
- The proponent's Stormwater Quality Monitoring results contained insufficient detail to verify results. An independent study should be contracted by Council.
- The proponent's Water Cycle Management Study suggests water quality ponds be constructed adjacent to Crown Land. The Crown Land comprises of a high value protective and filtering plant community which must remain intact and undisturbed from any future development. Any water quality ponds proposed by the development will need to be located on private land and maintained by individual lot owners.
- Lots which are located on flood prone land will need to be constructed above as per Council's Flood Heights Policy and Flood Liable Lands Policy.

Following consultation with the Natural Resource Assess Regulator (NRAR), Council have revised the timeline to complete the *Lake Wyangan Basin Stormwater and Wastewater Policy and Plan* to before the proposed LEP amendment is made.

Planning officers' assessment

Review of the Griffith Residential Land and Future of Housing Forum presentation (3 July 2018) shows:

- Griffith's population is expected to grow by 3743 in 2036, which is 0.8% per year between 2018-36 (based on id statistics).
- There is more than 350 potential lots zoned for residential use, with a MLS between 2000-5000m².
- There are no 1ha lots proposed to be developed.
- There are 341 available lots zoned for R5 Large Lot Residential, based on the subject site remaining at 5ha MLS.

There is adequate zoned land in Griffith for residential development, however, Council advise this land is not being developed and is creating housing shortages in Griffith. Housing shortage issues appear to be of greatest concern around affordable housing. Council exhibited the draft Griffith Housing Strategy to address these concerns and is currently under consideration.

There does not appear to be a need for additional lots from the proposal given the existing 350 lots zoned for R5 Large Lot Residential. It is acknowledged that these potential lots are expected to be less than 1ha. However, 1ha lots can already be achieved if connected to reticulated sewer. The proposal is based on a request from the proponent, which is supported in principle by Council, subject to further assessment of storm and waste water impacts to Lake Wyangan.

The proposal is the best method of achieving the intent of the proposal without installing sewer infrastructure. Alternative methods such as principal development standard or Additional Permitted Use are not considered suitable as it would require a location specific amendment to the LEP clauses.

4. STRATEGIC ASSESSMENT

State

There are no known relevant State strategic documents for the proposal.

Regional / District

The Riverina Murray Regional Plan 2036 (RMRP) is the relevant regional strategy for the proposal. The proposal is consistent with action 27.1 of the RMRP as the subject site is identified for rural residential development in the Griffith Land Use Strategy, which is endorsed by the Department.

As outlined by Council, the impacts of the proposal on Lake Wyangan and surrounding environmentally sensitive land is uncertain and have potential to negatively impact these areas. Until impacts of the development are clarified, the proposal is inconsistent with the following RMRP actions:

- 13.1 Locate, design, construct and manage new developments to minimise impacts on water catchments, including downstream and groundwater sources.
- 13.2 Minimise the impacts of development on fish habitat, aquaculture and waterways (including watercourses, wetlands and riparian lands) and meet the Water Quality and River Flow Objectives.

Of note, the planning proposal only includes an assessment of consistency against the Draft RMRP actions. These actions have since been updated and the planning proposal will also require updating to assess consistency against the final RMRP.

Local

The subject site is identified as existing large lot residential land for Nericon in the Griffith Land Use Strategy. At the time of writing the Griffith Land Use Strategy, it was assumed development would occur in line with the 5ha MLS. There is no commentary in the Griffith Land Use Strategy regarding increasing density at the subject site. Therefore, the proposal is not inconsistent with the Griffith Land Use Strategy as it has been identified and zoned for larger lot / lifestyle use.

The proposal is consistent with the local Community Strategic Plan, Guiding Griffith, Aim 4.1 enable accessible diversity in housing choice. This is because the proposal will create 1ha residential lots which are not currently available for development. Therefore, the proposal is consistent with local strategic planning.

Section 9.1 Ministerial Directions

Direction 2.1 Environment Protection Zones

This Direction applies as the proposal will affect part of Lot 610 DP751743 which is terrestrial biodiversity mapped land. The proposal is also adjacent to Lake Wyangan which is an environmentally sensitive area zoned for conservation. While the proposal will not reduce the environmental protection standards that apply to the land, the impact to environmentally sensitive areas is not well defined. The validity of studies prepared for this proposal has been questioned by Council, therefore, consistency with this Direction has not been justified. Additional information and consultation with the Biodiversity and Conservation Division (BCD) is recommended to justify consistency with this Direction.

Direction 2.3 Heritage Conservation

This Direction applies as the subject site is known to have previously contained Aboriginal objects. These known objects have been legally removed under an Aboriginal Heritage Impact Permit and will not be impacted by the proposal. Review of heritage assessments for the subject site show not all the subject site has been surveyed for presence of Aboriginal objects. Consultation with BCD is recommended to determine the proposals consistency with this Direction.

Direction 3.1 Residential Zones

This Direction applies as the proposal will alter planning controls which relate to R5 Large Lot Residential zone. The planning proposal is consistent with this Direction as it will:

- The land is zoned R5 large lot residential purposes.
- Create 1ha lots which is a type of housing choice not available in Griffith.
- Utilise existing infrastructure available on the land.
- Reduce the consumption of land for housing and urban development on the urban fringe by increasing residential density from 5ha to 1ha lots.
- Be expected to be of good design, subject to sewer management review.
- Not permit residential development until land is adequately serviced.
- Not reduce the permissible residential density of land as it will maintain the provision of subdividing to 3000m² if connected to reticulated sewer.

Direction 3.4 Integrating Land Use and Transport

This direction applies as the planning proposal will alter a residential zone through addition of permissible land uses. This direction requires for the proposal to be consistent with:

- Improving Transport Choice – Guidelines for planning and development (DUAP 2001).
- The Right Place for Business and Services – Planning Policy (DUAP 2001).

The planning proposal does not consider the principles of these guidelines and is inconsistent with this Direction. The inconsistency is justified because the proposal is supported by a Department approved strategy which identifies the subject site for residential purposes.

Direction 4.3 Flood Prone Land

This Direction applies as the planning proposal is located within flood prone land as mapped in the Lake Wyangan Flood Study 2012 (**Figure 4**). The planning proposal will increase the development potential of the land without reticulated sewer from 34 to 114 lots. The proposal is inconsistent with this Direction as it will allow for construction of houses in the Lake Wyangan floodway (red and yellow areas shown in **Figure 4**). The planning proposal states the lots which are affected by the floodway (**Figure 4**) will have an increased lot size, averaging 2ha, to allow dwelling house sites about the flood impacts. Consultation with State Emergency Service (SES) is recommended to ensure safe and efficient evacuation is possible for all future residents of the proposal. Additional information is also required to ensure this proposal is consistent with the NSW Flood Prone Land Policy, Floodplain Development Manual 2005 and this Direction.

Direction 5.10 Implementation of Regional Plans

As previously described, the proposal is inconsistent with the environmental protection actions of the RMRP. Until clarity on the potential impacts of the AWTS to Lake Wyangan and groundwater is provided, the proposal is inconsistent with this Direction. Consultation with Department of Industry – Water is recommended to verify there is minimal impact to groundwater.

Direction 6.1 Approval and Referral Requirements

This direction applies to all planning proposals. The proposal is consistent with this Direction as it will not create additional concurrence, consultation or referral requirements.

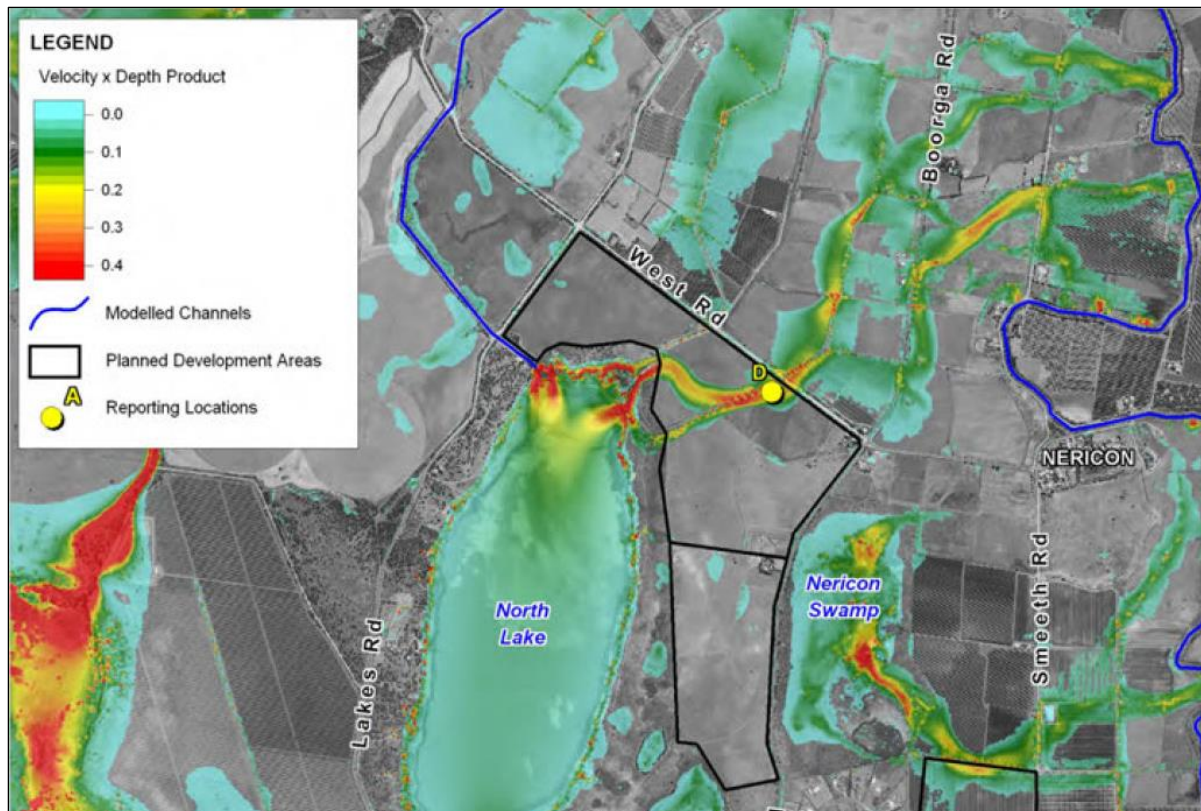


Figure 4: Flood mapping of the subject site for the 1% AEP event (Lake Wyangan Flood Study, 2012)

Direction 6.2 Reserving Land for Public Purposes

This direction applies to all planning proposals. The proposal is consistent with this Direction as affect any planning controls relating to public land.

Direction 6.3 Site Specific Provisions

This direction applies as the planning proposal will allow a particular development to occur, i.e. subdivision of lots to 1ha without connecting to reticulated sewer. The proposal is consistent with this Direction as it will not impose any additional development standards to the site.

State environmental planning policies (SEPPs)

State Environmental Planning Policy No 55—Remediation of Land

This Direction applies as the planning proposal will alter a residential zone which has been previously used for agriculture. Agriculture is a potentially contaminating activity under the proposed SEPP 55 amendments (Remediation of Land SEPP Explanation of Intended Effect January 2018), whereas only specific agricultural activities are listed in the current SEPP 55. When the subject site was rezoned to R5 Large Lot Residential in 2014, an assessment of potential land contamination occurred. This assessment found the subject site was suitable for residential zoning with a MLS of 3000m² if connected to reticulated sewer. Review of aerial imaging and consultation with Council confirms the land has been continuously cropped since the 2014 study. Given there has been no change in potentially contaminating land uses since the 2014 assessment and the reduction in MLS is not increasing the maximum density of residential dwellings on the land (i.e. MLS is not below 3000m²) an updated assessment is not required at this stage. Council have confirmed further land contamination studies will be completed at development application stage.

5. SITE-SPECIFIC ASSESSMENT

Social

The proposal will provide an additional type of housing (1ha) in Griffith which has a growing population. Diversification of housing choice is expected to have a positive outcome for the local community. Lake Wyangan is used for recreational water activities and camping. Increasing housing near these facilities is expected to have a positive impact for the new residents who can utilise these areas.

Environmental

The proposal will allow for 114 dwellings to be constructed adjacent to Crown Land and Lake Wyangan. Currently the proposal's masterplan includes constructing water quality ponds adjacent to Crown Land. The Crown Land comprises of a high value protective and filtering plant community which must remain intact. Council has requested for these ponds to be relocated away from the Crown Land to protect this plant community.

Lake Wyangan is home to many wetland birds, including some which are subject to important International and Australian water bird treaties. Council has raised concerns over the suitability of AWTS to be used on the 1ha lots. The soil type, existing soil salinity and proximity to Lake Wyangan, which has recurrent algal bloom outbreaks are all risk factors for contamination of Lake Wyangan to occur. Council have resolved to employ a consultant to evaluate the impact of stormwater and sewage discharge from the proposal (the *Lake Wyangan Basin Stormwater and Wastewater Policy and Plan*) before the proposed LEP is made. Until this study is complete, potential impacts of the proposal to Lake Wyangan are unknown.

The subject site is currently used for cropping, except for minor remnant vegetation to the north-west. Clearing for the proposal is expected to have a minor impact on the environment.

Economic

The planning proposal provides little discussion on the economic benefits of the proposal. Development of any kind is expected to provide a temporary economic benefit if local construction providers are used.

Infrastructure

The subject site can connect to all nearby services (roads, electricity, telecommunications, water and sewer) during construction of the subdivision. The proposal indicates that connection to reticulated sewer will not occur as AWTS will be used.

6. CONSULTATION

Community

A 28 day public exhibition period is recommended for this proposal. This is supported as there are unresolved section 9.1 Directions, therefore, the proposal does not qualify for a reduced consultation period.

Agencies

No agency consultation has been proposed by the proponent or Council. Consultation with NRAR to determine the potential impact to groundwater and Lake Wyangan. NRAR provided comments for consideration of the proposal on 20 June 2019 and did not raise any objections. The comments included considerations for development application stage, inclusion of buffers to watercourses and adoption of

saline groundwater management measures. NRAR supported the proposed AWTs and requested to be included in the detailed design of the system. Council have updated the planning proposal in response to NRAR's comments and note:

- Council will consider relevant NRAR recommendations at the development application stage.
- The existing crown reserve will accommodate appropriate buffers between the proposal and Lake Wyanga.
- Saline groundwater management measures will be addressed through the *Lake Wyangan Basin Stormwater and Wastewater Policy and Plan*.

No further consultation with NRAR is required. Consultation with the following agencies is recommended to be conditioned in the Gateway determination:

- To meet the requirements of section 9.1 Directions 2.1 Environment Protection Zones and 2.3 Heritage Conservation, consultation with BCD is recommended.
- To meet the requirements of section 9.1 Direction 4.3 Flood Prone Land, consultation with SES is recommended.
- The proposal will increase the development potential of land adjacent to Crown Land. Therefore, consultation with Crown Lands is recommended.

7. TIME FRAME

A time frame for completing the LEP has not been proposed by Council. The recommended timeframe is 12 months to ensure there is adequate time to complete the *Lake Wyangan Basin Stormwater and Wastewater Policy and Plan*.

8. LOCAL PLAN-MAKING AUTHORITY

Council has requested to be the local plan-making authority. It is recommended that authorisation to make the plan be retained by the Department at this time. This is due to the unresolved *Lake Wyangan Basin Stormwater and Wastewater Policy and Plan*, agency consultation and section 9.1 Directions which require Department approval. Once these concerns are resolved after the community consultation phase, Council may reapply to the Department for authorisation to be the local plan-making authority.

9. CONCLUSION

Preparation of the planning proposal is supported to proceed with conditions. Conditions include completing additional studies and agency consultation before proceeding to community consultation. Council is to seek permission from the Department to confirm these conditions have been adequately met before community consultation begins.

10. RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. agree that any inconsistencies with section 9.1 Directions (3.4 Integrating Land Use and Transport) are minor or justified; and
2. note that the consistency with section 9.1 Directions (2.1 Environment Protection Zones, 2.3 Heritage Conservation, 4.3 Flood Prone Land and 5.10 Implementation of Regional Plans) are unresolved and will require justification.

It is recommended that the delegate of the Minister for Planning and Public Spaces determine that the planning proposal should proceed subject to the following conditions:

1. Prior to public exhibition the planning proposal is to be amended to include:
 - (a) An assessment of the proposal's consistency with the Riverina Murray Regional Plan 2036 and section 9.1 Ministerial Direction, 5.10 Implementation of Regional Plans.
 - (b) Identify the mechanisms to enable part Lot 104 DP1018460 that is zoned R5 Large Lot Residential (south of West Road) to facilitate subdivision to minimum lots size of 1ha.
2. Council is to complete an independent stormwater and sewage discharge assessment of the proposal. This assessment is to be submitted to the Department when Council request that the plan be made.
3. Consultation is required with the following public authorities:
 - Department of Planning, Industry and Environment – Biodiversity Conservation Division.
 - State Emergency Service.
 - Department of Planning, Industry and Environment – Crown Land.

Each public authority is to be provided with a copy of the planning proposal and any supporting material and, given at least 21 days to comment on the planning proposal, before community consultation.

4. 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 5.5.2 of A guide to preparing local environmental plans (Department of Planning and Environment 2018).
5. 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).
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' 2017.
7. The time frame for completing the LEP is to be **12 months** from the date of the Gateway determination.



6.11.19

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7.11.19

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