



CM9 Ref: DOC20/111536

The General Manager  
Griffith City Council  
PO Box 485  
Griffith NSW 2680

Email: [admin@griffith.nsw.gov.au](mailto:admin@griffith.nsw.gov.au)

Dear Sir,

**Proposed Development:** Planning Proposal No. 4/2018-Proposed Lake Wyangan Large Lot Rural Residential Subdivision on Lot 309 DP 751743

**Applicant:** ABR Farming

**Location:** Lot 309 DP 751743 West Road Nericon NSW 2680

I refer to Council's letter dated 20 May 2020 requesting comments for the above development proposal.

The Department of Planning Industry & Environment - Crown Lands (the department), as adjoining landowner has reviewed the development application in accordance with the principles of Crown land management (s.1.4 *Crown Lands Management Act 2016*), and offers no objections to the proposed development as no impact to Crown land has been identified.

Should the development be modified in any manner that impacts the adjoining Crown land, e.g. by amendment to the development proposal or draft conditions of consent, the department requests an opportunity to further review the application prior to determination.

Should you require any further information, please do not hesitate to contact Adam Craig at the Griffith Crown Lands Office by phone on 02 69 37 2705 or email [adam.craig@crownland.nsw.gov.au](mailto:adam.craig@crownland.nsw.gov.au).

Yours sincerely

Adam Craig  
Senior Natural Resource Management Officer, Griffith District Office  
Department of Planning Industry & Environment - Crown Lands

Date: 28 May 2020

Our ref: DOC20-400231

Senders ref: PP4-2018

Kelly McNicol  
Contract Strategic Planner  
Griffith City Council  
PO Box 485  
GRIFFITH NSW 2680

Via email: [admin@griffith.nsw.gov.au](mailto:admin@griffith.nsw.gov.au)

17 June 2020

Dear Mr McNicol

**Subject: Planning Proposal 4/2018 – proposed Lake Wyangan Large Lot Residential on Lot 309 DP 751743 – West Road, Nericon**

Thank you for your letter dated 20 May 2020 regarding the abovementioned planning proposal and seeking comments from the Biodiversity and Conservation Division of the Department of Planning, Industry and Environment (the Department).

The Biodiversity and Conservation Division of the Department has statutory responsibilities relating to biodiversity (including threatened species, populations, ecological communities, or their habitats), Aboriginal cultural heritage and flooding.

We have reviewed the documents supplied and provide the following comments at **Attachment A**.

We recommend that an Archaeological Assessment of potential impact on Aboriginal cultural heritage on the four allotments be prepared in accordance with the *Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales*.

We note that Council has a duty to apply Part 7 of the *Biodiversity Conservation Act 2016* to all development, including ancillary infrastructure, anticipated as a result of this proposal.

The Lake Wyangan Floodplain Risk Management Study and Plan (2013) shows that flood risk within the proposal area is limited. We do not have any concerns with the planning proposal from a flooding perspective.

If you have any questions about this advice, please contact Marcus Wright, Senior Conservation Planning Officer via [rog.southwest@environment.nsw.gov.au](mailto:rog.southwest@environment.nsw.gov.au) or 02 6983 4917.

Yours sincerely



Andrew Fisher

**Senior Team Leader Planning**

**South West Branch**

**Biodiversity and Conservation Division**

**Department of Planning, Industry and Environment**

**Attachment A** Detailed comments – PP 4/2018 - Lake Wyangan Large Lot Residential

**Biodiversity**

Council has a duty to ensure that any clearing of native vegetation within the subject land is assessed in accordance with Part 7 of the *Biodiversity Conservation Act 2016*. This assessment must include all clearing ancillary to the development including, but not limited to, services, infrastructure, storm water disposal and Asset Protection Zones, whether it is on or outside of the subject land.

Where it involves the clearing of native vegetation, each subsequent development application (DA) must be accompanied by a Biodiversity Offset Scheme Entry Threshold (BOSET) report and a Test of Significance. Council must not consent to development without being satisfied based on this evidence that either no harm to threatened species will occur, or that such harm is offset under the Biodiversity Offset Scheme. This evidence is not required if the DA does not involve the clearing of native vegetation.

**Aboriginal cultural heritage**

The report *Planning Proposal Lake Wyangan Large Lot Residential* (ABR Farming 2019), submitted to Griffith City Council includes a section on Aboriginal cultural heritage (ACH). It states that an AHIMS search undertaken as part of DA 95/2017 identified eleven sites or objects previously found within the subject land. The planning report refers to the AHIMS results as Attachment 3. However, these are not included in Attachment 3.

AHIMS searches are valid for 12 months. A search undertaken in 2017 would not be current or appropriate for Council to rely upon for this assessment.

Copies of site cards were also not present in Attachment 3 as stated. The report notes that all artefacts associated with the site cards on the subject lands were removed under permit 3156, and that Griffith Local Aboriginal Land Council were contacted and confirmed that the items had been removed in 2009. The report concludes that there are 'no Aboriginal objects, items or sites within the subject lands which the planning proposal must facilitate the conservation of.' (ABR Farming 2019:29).

The report notes the land is disturbed from past and existing agricultural practices and the likelihood of additional Aboriginal sites or objects being uncovered is extremely low. If artefacts were uncovered during future development, Griffith Local Aboriginal Land Council (LALC) and the Office of Environment and Heritage would be notified (2019:30). Figure 12 shows the location of the eleven AHIMS sites recorded within the southern allotment (lot 102 DP 1018460) of the current planning proposal.

Attachment 3 of the planning proposal comprises a copy of the report *Archaeological Subsurface Investigation and Analysis of Aboriginal Stone Artefacts Aboriginal Heritage Impact Permit (AHIP) 1104369* (Landskape, Matt Cupper, for NGH Environmental Pty Ltd on behalf of Waterfront (Griffith) Pty Ltd, 8 October 2009) (AHIMS report number 101665). The report has been prepared as a response to AHIP 1104369 issued by the NSW Department of Environment and Climate Change.

A copy of AHIP 1104369 (AHIMS No. 3156) is included in Appendix B of the report. The AHIP was issued under Section 87 of the *National Parks and Wildlife Act 1974* (NPW Act) to permit to disturb or excavate land for the purpose of discovering Aboriginal objects and permit to disturb or move Aboriginal objects on land. Schedule C listed the salvage of specific Aboriginal objects 49-2-0115 through to 49-2-0125 (GLW1-GLW11). Condition 8 and 9 provided that no other objects other than those eleven sites listed in Schedule C could be moved, disturbed or excavated.

Condition 11 provided that the AHIP does not authorise damage under s.90 NPW Act. The AHIP was specific to the eleven sites listed in Schedule C and was not a s.90 area wide AHIP for all of parcels of land. If there were objects identified outside of the eleven registered AHIMS sites listed in Schedule C, these would not be covered under the AHIP, and must not be disturbed or excavated.

Salvage of objects was permitted to occur under the AHIP in accordance with the application and associated research methodology provided within the application. Schedule B established that burials must not be disturbed or moved. The AHIP was issued on 20 August 2009 and was valid for one year from that date. That AHIP is also not appropriate for Council to rely upon when considering this proposal.

There are a number of issues and limitations of the previous assessment and AHIP as follows:

1. 10 of the 11 Aboriginal sites (GLW1-3 and GLW5-11) are presently listed in AHIMS as valid. GLW4 is listed as deleted.
2. AHIMS search results from within the last 12 months have not been provided.
3. The previous assessment of the land was prepared prior to the 2010 amendments to the NPW Act.
4. The AHIP issued in 2009 was for testing and site specific to sites GLW1-GLW11 and not a s.90 area-wide AHIP for the four parcels of land of the planning proposal (lot 310 and 309 DP 751743 and lot 102 and 104 DP 1018460).

Section 9.1 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) establishes Ministerial Directions that Council must consider when making planning proposals including Ministerial Direction 2.3 'Heritage Conservation'. Direction 2.3 states that planning authorities must ensure that a planning proposal contains provisions that facilitate the conservation of Aboriginal objects and places protected under the NPW Act (Direction 2.3(4)(b)), and Aboriginal areas, objects, places or landscapes identified as being of heritage significance to Aboriginal culture and people (Direction 2.3(4)(c)).

To resolve these issues and to address Direction 2.3, we recommend that an Archaeological Assessment of the four allotments be prepared in accordance with the *Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales* (the Code). Qualifications for persons to comply with the Code are detailed in section 1.6 of the Code.

In addition to fulfilling the requirements under the Code, such as reporting on the results of an archaeological survey, the four items and limitations identified above will need to be considered and addressed. Key will be determining the status of sites GLW1-11. If it is determined that the 11 stone artefact sites (GLW1-11) have been removed from the land under the previous AHIP. Aboriginal Site Impact Recording Forms (ASIRFs) will need to be prepared and submitted to AHIMS.

The archaeological assessment should also demonstrate and map the results of an updated extensive AHIMS search that is no more than 12 months old, including the review of relevant site cards, framing the planning proposal within the current legislative requirements for ACH and providing a review of previous assessments and approvals, including Landskape 2009 and AHIP 1104369.

Should Aboriginal objects be identified during the Archaeological Assessment we recommend that consultation be undertaken in accordance with *Aboriginal cultural heritage consultation requirements for proponents 2010* and that an ACH assessment be prepared in accordance with the *Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW*. The discovery of Aboriginal objects must be notified to the Department through recording processes on AHIMS (see <https://www.environment.nsw.gov.au/topics/aboriginal-cultural-heritage/protect-and-manage/aboriginal-heritage-information-management-system/record-aboriginal-sites>).

The Department notes that the conservation of significant ACH values is consistent with the requirements of Section 9.1 (Direction 2.3 - Heritage Conservation) of the EP&A Act. The Department considers the application of appropriate land-use zoning (such as E2 conservation) as a suitable mechanism to promote the conservation of significant ACH values.

The Department recommends that the proponent clearly identify all potential areas, objects, places or landscapes of heritage significance to Aboriginal culture that may potentially constrain future land-use planning in reporting. The outcomes of the assessment should inform the planning proposal, to ensure consistency with the requirements of Section 9.1 (Direction 2.3 - Heritage Conservation) of the EP&A Act.

Copies of the Code, consultation requirements, guide and ASIRF are available from the Department website:

- Code of Practice for the Archaeological Investigation of Aboriginal Objects in New South Wales (OEH, 2010) [www.environment.nsw.gov.au/licences/archinvestigations.htm](http://www.environment.nsw.gov.au/licences/archinvestigations.htm)
- Aboriginal cultural heritage consultation requirements for proponents 2010 (DECCW, 2010) available at [www.environment.nsw.gov.au/licences/consultation.htm](http://www.environment.nsw.gov.au/licences/consultation.htm)
- Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW (DECCW, 2011) available at [www.environment.nsw.gov.au/licences/investassessreport.htm](http://www.environment.nsw.gov.au/licences/investassessreport.htm)
- Aboriginal site impact recording form  
<https://www.environment.nsw.gov.au/resources/cultureheritage/aboriginal-site-impact-recording-form-120558>

## **Flooding**

The primary objective of the NSW Government's Flood Prone Land Policy is to reduce the impact of flooding and flood liability on individual owners and occupiers of flood prone land, as well as to reduce private and public losses resulting from floods. The most appropriate method to assess the development of flood prone land is through the floodplain risk management process, which is detailed in the *NSW Floodplain Development Manual (2005)*.

Section 9.1 of the EP&A Act establishes Ministerial Directions that Council must consider when making planning proposals including Direction 4.3 'Flood Prone Land'. A primary objective of the *NSW Government's Flood Prone Land Policy* is to ensure that development of flood prone land is consistent with and the principles of the Floodplain Development Manual 2005. This direction applies when a relevant planning authority prepares a planning proposal that creates, removes or alters a zone or a provision that affects flood prone land.

Griffith City Council have been progressing a Floodplain Risk Management Program through the completion of studies and plans covering flood prone areas within the Griffith LGA. Most notably and relevant to this proposal is the Lake Wyangan Floodplain Risk Management Study and Plan (2013) including an assessment of future development around Lake Wyangan. According to that assessment, the land subject to this planning proposal was identified as being flood prone.

The Lake Wyangan Floodplain Risk Management Study and Plan (2013) recommended some general flood planning principles that future development should incorporate:

- Development excluded from floodway areas
- Sufficient provision for conveyance of floodwater up to and including the extreme flood event
- Minimum floor levels based on the established 1% Annual Exceedance Probability flood level plus 0.5m freeboard (typical for residential development)
- Implementation of development controls in relation to intensifying development including implementation of appropriate on-site stormwater detention policy to manage potential increase in run-off.

These controls are part of Council's existing policy. We do not consider that any special conditions apply to this planning proposal, assuming that Council's existing policy is followed. Accordingly, we expect Council's overarching development policies would provide for appropriate planning and control mechanisms to adequately assess the local flooding conditions of future DAs anticipated as a result of the proposal.

We recommend that Council require future applicants to comply with these flood planning principles. Assuming that is the case, we consider the planning proposal to be in accordance with the Lake Wyangan Floodplain Risk Management Study and Plan (2013). As that study and plan was prepared in accordance with the principles and guidelines of the Floodplain Development Manual 2005, the Department has no objections to the proposal from the perspective of flood risk.





Contact: Bryson Lashbrook  
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Nikki Pridgeon  
Planning Officer  
Western Region  
Department of Planning & Environment  
PO Box 58  
Dubbo NSW 2830

Our ref: INT  
File No: V15/2812-2#70  
Your Ref:

20 June 2019

Dear Nikki

**RE: Planning Proposal 4/2018 for ARB Farming Pty Ltd (Lots 308&610 DP 751743 and Lots 102 & 104 DP 1018460)**

Thank you for providing the Natural Resources Access Regulator (NRAR) the opportunity to comment on the above precinct plan proposal. It is noted that there are no mapped watercourses that occur within the proposal site, although the proposal is located within the land adjacent to Lake Wyangan.

I refer to your letter dated 28 October 2018 requesting comment on a proposed amendment to the Griffith Local Environmental Plan 2014. It is understood this consultation is in accordance with section 3.34 of the *Environmental Planning and Assessment Act 1979* and the amendment purpose is to reduce the minimum lot size relating to the subdivision of Lots 308 & 610 DP 751743 and Lots 102 & 104 DP 1018460.

The supporting documentation has been reviewed and the following comments are provided:

- It is recommended planning considerations to manage watercourses such as buffer widths be considered at the planning proposal stage and be consistent with NRAR's Guidelines for Controlled Activities (<https://www.industry.nsw.gov.au/water/licensing-trade/approvals/controlled-activities>). This would include the existing surface water drains on site and is important to understand any constraints on future lot layouts.
- The proposed ponds for stormwater detention on minor streams are considered exempt from harvestable rights calculations, provided no water is reticulated or pumped from them. These ponds serve specific functions and should only store water for a short period during and immediately after rain events. Such storages are exempt provided they function effectively. If any water is pumped or reticulated from such storage it can no longer be considered to be exempt and must be considered in calculating the Maximum Harvestable Right Dam Capacity (MHRDC) for each property.
- NRAR acknowledge the potential for urban salinity impacts within this area and note the existing saline groundwater present within the site. It is recommended management measures be adopted to mitigate the exacerbation of saline conditions and resultant impacts on surface water and groundwater sources.
- Any future development applications that include works on waterfront land (including site drainage) may require a Controlled Activity Approval from NRAR.



- NRAR supports the proposed stormwater management system concept. NRAR requests to be consulted in the detailed design of the stormwater management system.

Should you have any further queries in relation to this submission please do not hesitate to contact myself on 02 6937 2708 or [bryson.lashbrook@nrar.nsw.gov.au](mailto:bryson.lashbrook@nrar.nsw.gov.au).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Bryson Lashbrook', written in a cursive style.

**Bryson Lashbrook**  
**Water Regulation Officer**  
**Licensing and Approvals Regional Water Regulation West**  
**Department of Industry- Natural Resources Access Regulator**