



Ordinary Meeting

Tuesday, 9 April 2024

ATTACHMENTS UNDER SEPARATE COVER

- CL01 DA 280/2023 - Three (3) Lot Large Lot Residential Subdivision**
- (a) DA 280/2023 - Draft Conditions of Consent
 - (b) DA 280/2023 - Proposed Subdivision Plan
 - (c) DA 280/2023 - Submission objecting - Streat
 - (d) DA 280/2023 - Applicant Response to Submissions
 - (e) DA 280/2023 - Assessment Report
- CL02 DA 281/2023 - Three (3) Lot Large Lot Residential Subdivision**
- (a) DA 281/2023 - Draft Conditions of Consent
 - (b) DA 281/2023 - Proposed Subdivision Plan
 - (c) DA 281/2023 - Submission Objecting
 - (d) DA 281/2023 - Response to Submission
 - (e) DA 281/2023 - DA Assessment Report



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Attachment A – Draft Conditions of Consent

Administrative Conditions

The development must be carried out in accordance with the following conditions of consent.

1. Approved Development

Development consent has been granted for three (3) lot Torrens Title subdivision, with Clause 4.6 Exception to minimum Lot Size at Lot 3 DP 1281086, 236 Boorga Road LAKE WYANGAN.

It is advised that the proposed development has been assessed in regards to the provision of Clauses 2.8, 4.1 and 4.6 of the Griffith Local Environmental Plan 2014.

The development must be implemented in accordance with Development Application No. 280/2023(1) accepted by Council on 18 December 2023 and the below mentioned plans and/or documents, except where amended in red on the attached plans or modified by the conditions of this consent.

Drawing / Plan	Date Accepted by Council	Prepared or Drawn By
Subdivision Plan	18 December 2023	PHL Surveyors

Document	Date Accepted by Council	Prepared or Drawn By
Statement of Environmental Effects	18 December 2023	MIA Plan
Clause 4.6 Variation Request	18 December 2023	MIA Plan

If there is any inconsistency between the approved plans and documents referred to above, the conditions shall prevail.

2. Construction Approval (Civil Works)

Prior to construction of the approved development, it is necessary to obtain a Construction Approval (Civil Works). This approval can only be issued by Council. An Application for Construction Approval (Civil Works) form, complete with detailed plans and specifications, shall be submitted to Council for the Construction Approval (Civil Works).

3. Provision of Services

The applicant is to be responsible for all amplification, extension and adequate provision for connection to services at their own expense. The work is to be in accordance with Council's *Engineering Guidelines – Subdivisions and Development Standards* and relevant authorities' specifications.

4. Lapsing of Consent

In accordance with Section 4.53 of the Environmental Planning and Assessment Act, 1979 this consent is valid for a period of five (5) years from the date of consent.

Note 1: Development consent for the purpose of the erection of a building or the subdivision of land or the carrying out of a work does not lapse if building, engineering or construction work relating to the development is lawfully and physically commenced on the land to which the consent applies before the date on which the consent would otherwise lapse.

Note 2: Development consent for the purpose of the use of the land, building or work the subject of the consent does not lapse if it is actually commenced the date on which the consent would otherwise lapse.

5. Damage to Council property

If any damage is occasioned to Council property during construction and associated works, the cost of repairs will be recoverable. It is therefore requested that any damage which is obvious before works commence be immediately notified to Council to avoid later conflict.

6. Existing Services

The applicant must check that the proposed works do not affect any Council, electricity, telecommunications, gas or other services. Any required alterations to services will be at the developer's expense.

7. Tree Preservation

The applicant is advised that the land is subject to Council's Tree Policy and the requirements of that policy are to be strictly adhered to. Should the applicant/owner require advice in this regard they are to contact Council's Parks and Gardens Department.

8. Aboriginal Heritage

If any Aboriginal object is discovered and/or harmed in, or under the land, while undertaking the proposed development activities, the proponent must:

1. Not further harm the object.
2. Immediately cease all work at the particular location.
3. Secure the area so as to avoid further harm to the Aboriginal object.
4. Notify the Department of Planning, Industry and Environment as soon as practical on 131555, providing any details of the Aboriginal object and its location.
5. Not recommence any work at the particular location unless authorised in writing by the Department of Planning, Industry and Environment.

In the event that skeletal remains are unexpectedly encountered during the activity, work must stop immediately, the area secured to prevent unauthorised access and NSW Police and the Department contacted of Planning, Industry and Environment.

9. Other Cultural Heritage

Should any cultural artefacts, archaeological relics or any object having interest due to its age or association with the past be located during the course of works, all works are to cease immediately and notification shall be provided to the Office of Environment and Heritage in accordance with the *National Parks and Wildlife Act 1974*. Work shall not recommence in the area until this is authorised by the Office of Environment and Heritage.

Note. Depending on the significance of the object uncovered, an archaeological assessment and excavation permit under the Heritage Act 1977 may be required before further the work can continue.

10. Rural Numbering

The subject properties have been allocated the following rural numbers of:

- Proposed Lot 14 – 238 Boorga Road
- Proposed Lot 15 – 236 Boorga Road
- Proposed Lot 16 – 234 Boorga Road

These numbers shall be reflective and permanently displayed in a prominent position that is clearly visible from the public road at all times.

Prior to Commencement of Works

The following conditions need to be met prior to the commencement of works. The necessary documentation and information must be provided to the Principal Certifying Authority (PCA), as applicable.

11. S138 Roads Act

Prior commencement of works, a Section 138 Roads Act application, including payment of fees, shall be lodged with Griffith City Council, as the Roads Authority for any works required within a public road. These works may include but are not limited to:

- a). Vehicular crossings (including kerb reinstatement of redundant vehicular crossings)
- b). Road opening for utilities and stormwater (including stormwater connection to Council Infrastructure).
- c). Road Occupancy or road closures

All works shall be carried out with the Roads Act approval, the development consent including the stamped plans and Griffith City Council specifications.

Note 1: Approvals may also be required from the Roads and Maritime Service (RMS) for classified roads.

Note 2: The application is to be made prior to the issue of the Construction Certificate but does not have to be approved by the Roads Authority prior to the issue of that certificate.

12. Traffic Control Plan (TCP)

A traffic control plan is to be submitted to Council satisfying the provisions of Australian Standard 1742.3, for acceptance **prior to the commencement of work within Council's road reserve**. Strict compliance to the traffic control plan is to be maintained throughout the duration of the construction work.

13. Sedimentation and Erosion Controls

Effective dust, noise, sedimentation and erosion controls are to be implemented prior to the commencement of site works. This is to include (as a minimum):

- (a) the installation of a sediment fence with returned ends across the low side of the works; and
- (b) a temporary gravel driveway into the site. All vehicles needing to access the site are to use the temporary driveway.

The control measures are to be installed **prior to the commencement of site works** and maintained during works in order to ensure that site materials do not leave the site and/or enter the stormwater system and to maintain public safety/amenity.

14. External Service Providers

Prior to the commencement of works written advice shall be obtained from the electricity supply authority, an approved telecommunications carrier and an approved gas carrier (where relevant) stating that satisfactory arrangements have been made to ensure provision of adequate services to the development.

During Construction

The following conditions of consent must be complied with at all times during the demolition, excavation and construction of the development.

15. Sedimentation and Erosion Controls

The approved erosion and sediment control measures shall be implemented and maintained during works.

16. Hours of Work

The principal certifier must ensure that building work, demolition or vegetation removal is only carried out between:

7.00am to 6.00pm on Monday to Saturday.

The principal certifier must ensure building work, demolition or vegetation removal is not carried out on Sundays and public holidays, except where there is an emergency.

Unless otherwise approved within a construction site management plan, construction vehicles, machinery, goods or materials must not be delivered to the site outside the approved hours of site works.

Note: Any variation to the hours of work requires Council's approval.

17. Contaminated Land Unexpected Finds

In the instance that works cause the generation of odours or uncovering of unexpected contaminants, works are to immediately cease, Council is to be notified and a suitably qualified person appointed to further assess the site.

Prior to the issue of the Subdivision Certificate

Before Council will release the subdivision plan, you will need to demonstrate compliance with the following conditions. The necessary documentation and information must be provided to the Principal Certifying Authority (PCA), as applicable.

18. Subdivision Certificate

A Subdivision Certificate must be issued prior to lodgement of the Final Plan of Survey with the Land Registry Services. An application for a Subdivision Certificate is required upon completion of all conditions of consent. The application is to be lodged with the Principal Certifier via the NSW Planning Portal.

19. Compliance with Conditions of Consent

The applicant is to ensure that all conditions of Development Application No. 280/2023 are completed **prior to the issue of the Subdivision Certificate**.

20. Section 64 Water Supply, Sewerage and Drainage Contributions

Pursuant to Section 64 of the *Local Government Act 1993* and the *Water Management Act 2000*, this development requires a payment of a S64 contribution. The amount payable at the time of issue of this consent is set out in the table below.

Table of Contributions Required – Water, Sewerage & Drainage

Type of contribution	Location	Amount per tenement	Number of tenements	Amount to be paid
Water supply	Griffith	\$ 8,695.00	2.4 ET	\$20,868.00
Total				\$20,868.00

The total amount payable will be subject to review in accordance with Council's Revenue Policy current at the time of payment.

The contribution is to be paid **prior to the issue of the Subdivision Certificate**.

The contribution is exclusive of the fees for the connection of water services to the individual allotments. Payment is to be in the form of cash or bank cheque. Where bonding is accepted a bank guarantee is required.

Reason: Pursuant to Section 64 of the *Local Government Act 1993* and the *Water Management Act 2000*, the applicant is required to apply to Council for a Compliance Certificate under the provisions of S305 of the *Water Management Act 2000*.

21. Internal driveway

Prior to the issue of a Subdivision Certificate the internal driveway to proposed lot 14, lot 15 and Lot 4 DP 1281086 is to be constructed of gravel to an all-weather standard in accordance with *Council's Engineering Guidelines – Subdivisions and Development Standards*.

22. Accessway upgrade

Prior to the issue of a Subdivision Certificate, the existing accessway servicing the subject development is to be re-sealed between the property boundary and the road carriageway off Boorga Road. The accessway shall include guideposts. The accessway is to be constructed in accordance with *Council's Engineering Guidelines – Subdivisions and Development Standards*.

23. S138 Roads Act Approval

Prior to the issue of a Subdivision Certificate, the Principle Certifying Authority shall ensure that all works associated with a S138 Roads Act approval have been inspected and signed off by Griffith City Council.

24. Right of Carriageway

Prior to the issue of the Subdivision Certificate a Right of Carriageway is to be created in accordance with Section 88B of the Conveyancing Act where vehicles cross property boundaries. Matters to be addressed in the instrument should include the width and location of the right of carriageway.

25. Restriction to User

Vehicular access to proposed Lots 14 and 16 from Boorga Road is not permitted at any time. **Prior to the issue of a Subdivision Certificate**, a restriction to user shall be created over proposed Lots 14 and 16 in accordance with Section 88E of the Conveyancing Act. The restriction is to specify that vehicular access to the created allotments off Boorga Road is not permitted at any time.

26. Restriction to User

Prior to the issue of the Subdivision Certificate, a restriction shall be included on the Section 88B instrument, to be registered on the title of proposed lots, that no dwelling house shall be erected and/or no further subdivision shall be undertaken, without a development application for such being accompanied by a Limited Stage 2 Site Investigation Report (including a soil sampling regime) assessing the lands suitability for rural residential development, under State Environmental Planning Policy (Resilience & Hazards) 2021 due to the previous use of the land for agriculture.

27. Restriction to User - Landscaped Buffer

Prior to the issue of the Subdivision Certificate, a restriction shall be included on the Section 88B Instrument, to be registered on the title of the proposed lots, that prior to the issue of an Occupation Certificate for a dwelling house on each lot, a 10 metre wide landscaped buffer is to be planted along all boundaries with predominantly native vegetation along the boundaries of the subject premises. The purpose of the buffer is to minimise the impact of the development on the streetscape.

28. Restriction to User - Buffer

Prior to the issue of the Subdivision Certificate, a restriction shall be included on the Section 88B Instrument, to be registered on the title of the proposed lots, that no habitable building shall be constructed within 25 metres of the eastern boundary of the proposed lots. The purpose of the buffer is to minimise the adjacent agriculture on the proposed future dwellings.

29. Easement for Services

Prior to the issue of the Subdivision Certificate easements shall be established pursuant to Section 88B of the *Conveyancing Act 1919* where services cross property boundaries. The location and widths of the easements are to be specified in the instrument for the purpose of protecting and identifying the services.

30. Stormwater Drainage

Adequate arrangements are to be made for the disposal of stormwater. Stormwater runoff shall not be permitted to flow over the property boundaries onto the adjoining properties unless legally created easements in accordance with Section 88B of the *Conveyancing Act* are created.

Detailed design drawings for the proposed stormwater drainage system are to be submitted to Council for approval in accordance with *Council's Engineering Guidelines – Subdivision and Development Standards*. All works relating to the stormwater drainage system are to be completed and inspected by Council **prior to the issue of a Subdivision Certificate**.

31. Notice of Arrangement for Electricity Provision

Prior to the issue of the Subdivision Certificate, a copy of the Notice of Arrangement (NOA) from Essential Energy which states that satisfactory supply arrangements have been made for the provision of electricity to the proposed development is provided to Council.

32. Approval to operate

Prior to the issue of a Subdivision Certificate, owners must obtain from Council an approval to operate the on-site sewage system on proposed lot 15.

An approval can only be issued once Council's Environment & Health Department have inspected the system and effluent disposal area and are satisfied the system has been installed and is currently working adequately in accordance with its NSW Health certificate of accreditation and the relevant Australian Standards and legislative requirements.

Details to accompany the application for an Approval to operate include the specifications of the existing on-site wastewater treatment facility and its effluent disposal area including tank capacity and location and a recent service report from a licensed plumber certifying they are in good working order and that the land application area is coping effectively with the current effluent load. The location of the tank and disposal area shall be shown accurately on a site plan. The site plan shall show how the tank and disposal area meet required buffer distances to the new proposed boundaries of the subdivision application.

Advisory Note: if the current system is confirmed to be failing, the applicant will need to submit an 'Approval to Alter' and engage the services of a suitably qualified person (e.g. a licensed plumber) to complete rectification works or upgrades to ensure that the system can operate effectively. These details shall be included in the application to Council.

If the system needs to be replaced with a new on-site sewage management system, an Application for an Approval to Install/Operate will need to be submitted prior to installation.

On-Going Requirements

The following conditions or requirements must be complied with at all times, throughout the use and operation of the development.

nil

Attachment C – Advisory Notes

The following information is provided for your assistance to ensure compliance with the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2021*, or other relevant legislation and Council's policies. This information does not form part of the conditions of development consent pursuant to Section 4.16 of the Act.

(1) Water meter location

In accordance with Council's *Engineering Guidelines – Subdivision and Development Standards*, potable water services are not permitted to be located through easements. Property services shall be located such that the point where the meter assembly is located is within 300mm of the property side boundary.

Attachment D – Other Council Approvals and Consents

Section 68 Local Government Act 1993 Approvals

This consent includes the following approvals under Section 4.12 of the *Environmental Planning and Assessment Act 1979* and Section 68 of the *Local Government Act 1993*.

nil



**PLANNING
POTENTIAL™**

**DA 280/2023
Submission
Lot 3 DP 1281086
236 Boorga Road, Lake Wyangan**

Prepared for Barbara & Neil Streat

January 2024



URBAN, RURAL & REGIONAL PLANNING CONSULTANTS

Lot 3 DP 1281086, 236 Boorga Road, Lake Wyangan

DA Submission



DEVELOPMENT DETAILS

Applicant:	Mrs J M Violi
Owner:	Anthony & Jenna Violi
Proposal:	3 lot Subdivision & Clause 4.6 Variation Request
Location:	Lot 3 DP 1281086, 236 Boorga Road, Lake Wyangan
Zone:	R5 Large Lot Residential

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Lot 3 DP 1281086, 236 Boorga Road, Lake Wyangan

DA Submission



Commentary on the Proposal DA 280/2023 - Lot 3 DP 1281086, 236 Boorga Road, Lake Wyangan

DA 280/2023 seeks Council consent for a three (3) lot Torrens Title Subdivision of land that has recently been rezoned (via a Council Planning Proposal) from RU4 (Primary Production Small Lots) to R5 (Large Lot Residential). A concurrent DA was submitted for the adjoining land parcel to the north (Lot 4 DP 1281086) via DA 281/2023 which also seeks development consent for a three (3) lot Torrens Title Subdivision.

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The application is on public exhibition to Thursday 25 January 2024.

This submission has been prepared on behalf of Barbara & Neil Streat as owners of land [REDACTED] Lake Wyangan as shown in Figure 1. The submission identifies issues of concern regarding the proposed development and the developments impact upon 79 Smeeth Road, Lake Wyangan.



Figure1: Subject site at 236 Boorga Road and Location of Submission at 79 Smeeth Road

The main issues of concern include:-

- Right to Farm
- Proximity of land to be developed with adjoining land using Frost Control Fans
- Inadequate setbacks and buffer between proposed building envelopes and agricultural land
- Frost Control Fan Local Policy
- Landscaping
- Land contamination from past dairy and agricultural activities
- Access
- Land Capability

Lot 3 DP 1281086, 236 Boorga Road, Lake Wyangan

DA Submission



- Stormwater and Detention Basin

Right to Farm

The Right to Farm concept is multi faceted with the common interpretation and the one commonly used in the NSW Right to Farm Policy (Department of Primary Industries) being the desire by farmers to undertake lawful agricultural practises without conflict or interference arising from complaints from neighbours and other land users.

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The regional plan, Riverina Murray Regional Plan 2041 acknowledges the Right to Farm. Development of land that has been rezoned from an agricultural use (RU4) to a residential use (R5) needs to ensure there are adequate buffers between the land zones to minimise land use conflict and ensure the “Right to Farm” of the existing land users.

Zone Objectives

The subject land is zoned R5 Large Lot Residential under the provisions of the Griffith LEP 2014. The land to the development sites east has a zoning of RU4 Primary Production Small Lots (79 Smeeth Road) with land to the south having a zone of R5 (Lot 1 DP 848433) which is still actively used for agricultural type pursuits.

The objectives of the R5 zone include:

- To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.
- To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.
- To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.

The stated objective “to minimise conflict between land uses within this zone and land uses within adjoining zones” reflects the transition between land to the development sites east and south of the subject site. The proposed subdivision seeks a 10m building envelope setback from the eastern boundaries. 10m is not considered to be an appropriate buffer or transition between an active agricultural zone and a residential zone for Proposed Lots 14 and 15. Proposed Lot 16 adjoins Lot 1 DP 848433 which also formed a part of the recent Planning Proposal to rezone land from RU4 to R5.

Council should consider a setback of 40m from the eastern boundary for the building envelope and include planted landscaping within the setback area to assist in the reduction of impact from general agricultural activities such as noise from agricultural machinery and spray drift.

The boundary setbacks should be stipulated on the registered subdivision plan.

Landscaping condition and wording at Councils discretion, however it is suggested that plantings need to be in place prior to the completion and occupation of any dwelling or any other structure.

Suggested wording may include the following:

Lot 3 DP 1281086, 236 Boorga Road, Lake Wyangan

DA Submission



Landscaping should be installed in accordance with an Approved Landscape Plan prepared by a suitably qualified person using appropriate species for the locality and shall be permanently maintained to the satisfaction of Council's Development Assessment Coordinator or as specified by Council. Landscaping along the allotments eastern boundary (rear) shall have a minimum width of 40m. Buffer plantings are to be chosen to ensure a height at maturity in excess of 6m and the submission of a Landscape Management Plan to ensure trees are maintained and irrigated with any dead or dying trees to be replaced.

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All landscaping plantings are to be in place prior to the completion and occupation of any dwelling or any other structure.

These conditions and requirements could also be placed as a restriction on the title so future purchasers of land are aware of their responsibilities as landowner.

Inadequate setbacks and buffer between proposed building envelopes and adjoining agricultural land

Land to the immediate east, Lot 2 DP 848433, has a land use zone of RU4 Primary Production Small Lots. The proposal seeks a 10m setback from the sites rear boundary for the proposed building envelope for Proposed Lots 14, 15 and 16. This setback of 10m is inadequate for a transition between agricultural land and large lot residential land; particularly Proposed Lots 14 and 15. It is noted that Proposed Lot 16 adjoins R5 land to the south and east (Lot 1 DP 848433) and does not directly adjoin agricultural land as Lot 2 DP 848433 however this land is currently used to house and agist horses and therefore some protection is required to acknowledge the site existing use of the land.

The Griffith DCP requires dwellings on R5 land to have setbacks of 40m from agricultural land (RU1 and RU4). The setback area requires suitable landscaping with a height at maturity in excess of 6m that is appropriate to the locality. A Landscape Plan and Management Plan (to ensure trees and watered, maintained and replaced if dead or dying) by a suitably qualified consultant is required to be submitted and approved by Council.

The requirement for buffers and future landscaping should be placed on the title at subdivision stage so future landowners know and understand their responsibilities.

It is further acknowledged that the rear boundaries of these proposed lots adjoin the Murrumbidgee Irrigation Supply Channel.

Refer to above point.

Proximity of land to be developed with adjoining land using Frost Control Fans

The proposed development for subdivision along Boorga Road is within 1000m of land used for intensive plant agriculture utilising frost control fans.

Refer to the below discussion on Frost Control Fan Local Policy.

Frost Control Fan Local Policy

115 Smeeth Road (Lot 3 DP 848433) is situated to the east of the subject land, on the corner of Jones Road and Smeeth Road. The land is used for intensive plant agriculture and uses frost control fans as a part of their operation.

Lot 3 DP 1281086, 236 Boorga Road, Lake Wyangan

DA Submission



The land to be developed for future residential housing (subject to a future DA) whilst does not directly adjoin 115 Smeeth Road, the land is well within 1000m from land using frost control fans.

In order to protect surrounding operations, adequate buffers should be provided for any future building envelopes. The proposal indicates a 10m setback from the lands eastern (rear) boundary which is considered inadequate for dwellings' in proximity in the frost control fans and adjoining agricultural land in general.

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As per Council's Frost Control Fan Policy it suggested that restrictions be placed on the title to address:

- Location of building envelope with appropriate setbacks. A minimum of 40m setback is recommended from the rear boundary including planting of appropriate landscaping species suitable for the locality.
- Any future dwelling are to ensure noise attenuation measures are incorporated into the design and construction to ensure indoor noise criteria can be met for Noise Sensitive Zone (R5 land)

Location of affected residence	Outdoor Criteria (LAeq 15 min)	Indoor Criteria (LAeq 15 min)
Noise Sensitive Zone (this includes R5 land)	45dB(A) (max)	25dB(A)(max)

An acoustic report from a suitably qualified consultant should accompany any DA for a residential dwelling ensuring the proposed plans, material and dwelling siting is able to comply with the above noise requirements.

Landscaping

The proposal does not include any measures for landscaping along the development sites eastern and southern boundaries. Condition of landscaping measures to provide protection for future occupants and the adjoining lands agricultural pursuits.

Refer to points on Right to Farm, Frost Control Fans policy, Zone Objectives, for R5 land and land use buffers.

Land Contamination

It appears that when the subject land was rezoned from RU4 to R5 as a part of the Planning Proposal General Amendment to Griffith Local Environmental Plan, contamination assessment was not undertaken. Contamination was identified as a constraint in Page 83 of its report to Council SSA 14 – Boorga Road. The report identifies that further investigation is required due to past agricultural activities. Future development of the site post rezoning, requires a detailed Stage 2 Site Investigation.

It is unclear whether this investigation work has been undertaken however in Councils assessment of the proposed subdivision under the State Environmental Planning Policy (resilience and Hazards) 2021, the Applicant should be required to provide documentation to demonstrate there are no residual pesticides from past agricultural use that would impact the

Lot 3 DP 1281086, 236 Boorga Road, Lake Wyangan

DA Submission



site for future residential use. The assessment needs to ensure Councils satisfaction at subdivision stage and should not be left to DA stage for future dwellings. Prospective purchasers need to be assured the land is safe for residential use.

Onsite Effluent

Onsite Effluent Management assessment for each allotment by a suitably qualified consultant should be prepared and submitted to Council to demonstrate the site is capable and the proposed lot size is sufficient for the disposal of effluent.

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Access

The proposal indicates the existing access point is to be used as a single access point off Boorga Road for a total of six (6) allotments covering this proposal and the concurrent proposal DA 281/2023. As landowners in the area, safety is paramount for road users and for the developments future owners and occupiers. The Griffith Subdivision Code in the Griffith Residential Development Code Plan references that Large Lot Residential Subdivision should avoid using access to a public road via a right of carriageway or battle-axe lot (refer section 4.1(d)).

Boorga Road is a designated B-double and school bus route. Consideration of safety of access, speed limit and suitably to allow emergency service vehicles should all be taken into consideration by Council as to how access from Boorga Road and any internal access is approved or indeed appropriate. No consideration by the subdivision design has taken into account appropriate location for the collection of waste and recycling services.

The alternative to a right of carriageway is for the development to require a public service road as has been required for Pelican Shores and the Wyangan Estate.

Should Council accept that a single access point is sufficient for traffic generation from four (4) additional lots and use for six (6) lots in total, the access point should be upgraded to Council specifications and be suitable to accommodate six (6) lots. The upgrade specifications need to also ensure the access is of a suitable standard for emergency service vehicles (including fire, RFS, police, ambulance and SES).

The RTA Guide for Traffic Generation specifies a dwelling generates nine (9) traffic movements per day. This equates to 54 traffic movements per day using one (1) access point.

The internal access way (should it be a right of carriageway) needs to also be upgraded to cater for the additional vehicle movements (including emergency service vehicles) including width and materials to a standard as specified by Council.

Appropriate easements and maintenance requirements should be conditioned as a part of any approval.

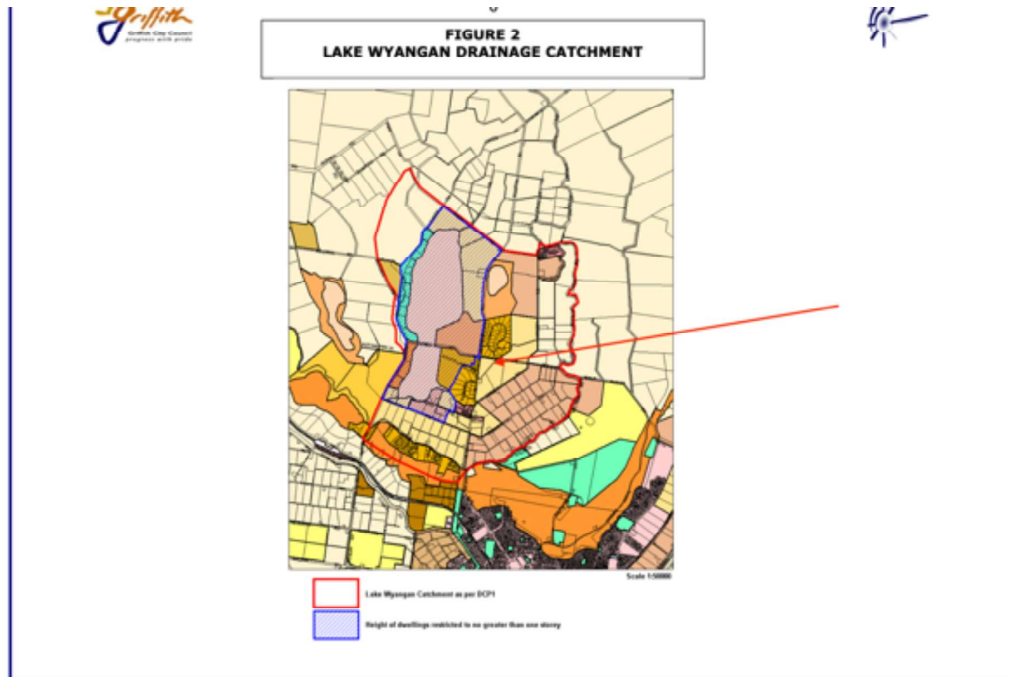
Stormwater and Detention Basin

The land is located within the Lake Wyangan Drainage Catchment as shown in Figure 2.

Preliminary stormwater and drainage calculations should be provided as a part of the subdivision assessment to demonstrate the proposal does not adversely impact upon the existing known capacity of the drainage catchment.

Lot 3 DP 1281086, 236 Boorga Road, Lake Wyangan

DA Submission



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Figure 2: Lake Wyangan Drainage Catchment

Any further enquiries can be made directly to our office on [REDACTED]

[REDACTED]
Amanda Rasmussen
Principal Planner
Planning Potential



The General Manager
Griffith City Council
1 Benerembah Street
GRIFFITH NSW 2680

15 February 2024

ATTN: Kerry Rourke

Dear Kerry

RE: DA 280/2023 Subdivision of Lot 3 DP 1281086 236 Boorga Road & DA 281/2023 Subdivision of Lot 4 DP 1281086 Boorga Road – Response to Objections

Please see following a response on behalf of the applicants and landowners A & J Violi and T Lando to the submissions raising concerns with the proposed subdivisions of Lot 3 & Lot 4 DP 1281086 at 236 Boorga Road, Lake Wyangan. We thank Griffith City Council staff for allowing us the opportunity to address the concerns which have been raised. We have reviewed the concerns and provide the following response.

The subject lots were included in the recent Planning Proposal for a General Amendment to the GLEP2014. The lots, including some adjoining lots were included as *Subject Site 14 – Boorga Road* for rezoning from *RU4 Primary Production Small Lots* with minimum lot sizes of 5 hectares, to *R5 Large Lot Residential* with 2 hectares minimum lot sizes. A subsequent application for subdivision of the land is the reasonable next step following this recent LEP amendment, as endorsed by the NSW Department of Planning.

Concern: Right to Farm, inadequate setbacks and buffer between proposed building envelopes and agricultural Land, and landscaping

The submission indicates that inadequate buffers are proposed between the site and adjoining lands. Land to the east (Lot 2 DP 848433, 79 Smeeth Road) is zoned *RU4 Primary Production Small Lots*. The submission claims that 10m is not considered to be an appropriate buffer or transition between an active agricultural zone and a residential zone, and that Council should consider a setback of 40m from the eastern boundary for the building envelope. This 40m is suggested to include planted landscaping within the setback area, and enforced via a restriction on the title.

1

Response: The proposed 10m building envelope is consistent with the requirements specified in the *GRDCP2020* for subdivisions of *R5 Large Lot Residential* zones. It is noted that a 15m wide lot (irrigation supply canal) adjoins the eastern boundary of the subject sites, separating adjoining land to the east (Lot 2 DP 848433, 79 Smeeth Road), which is presently vacant of any active agricultural activities. Combining the 15m wide canal lot and 10m building envelopes, this allows a 25m separation distance from the adjoining lot zoned *RU4 Primary Production Small Lots*. Enforcing a 40m landscaped buffer is excessive and unnecessary; there is no explicit requirement in the *GRDCP2020* which specifies that these lots must be landscaped as part of the subdivision. The appeal to future purchasers of large lot residential lots such as these, is the ability to select landscaping to their preference to integrate into future development of the land. It is likely given the large size of these lots (2ha), that future occupants may prefer to plant veggie patches and fruit orchards, or construct non-habitable structures such as storage sheds or garages in this area. It is therefore unreasonable to require a 40m planted buffer restriction on these proposed lots.

Concern: Frost control fans

The submission suggests that an acoustic report from a suitably qualified consultant should accompany any DA for a residential dwelling, ensuring the proposed plans, material and dwelling siting is able to comply with noise requirements.

Response: A search of constraints affecting this property did not show any existing frost fan buffers applying to the land, nor will the land be affected by the approved frost fans yet to be finalised in Nericon. It is noted that the nearby citrus farm mentioned in the submission operates moveable frost fans, and this is generally intermittent through June to August. It is not considered that an acoustic report, or enforcing noise attenuation measures are warranted.

Concern: Land contamination from past dairy and agricultural activities

Documentation should be provided to demonstrate there are no residual pesticides from past agricultural use that would impact the site for future residential use.

Response: An initial evaluation into the potential for land contamination has been provided to Council in accordance with GCC Contaminated Land Policy EH-CP-203 (December 2023).

Concern: Access

The submission raises concerns with safety for road users, future lot owners and occupiers, as well as querying an appropriate location for the collection of waste and recycling services. The submission suggests that the development provide a public service road similar to Pelican Shores and Wyangan Estate, the internal access way be upgraded to cater for the additional vehicle movements, and easements and maintenance requirements should be conditioned as a part of any approval.

Response: The driveway to the subject sites is considered the safest location in terms of avoiding conflict with the intersection of Boorga and Jones Roads, and Boorga Road and South Lake Drive, the location has clear sight distance on both directions of Boorga Road (See figures 3 & 4). The access and the internal driveway can be widened and constructed of an all-weather surface and it is understood that this will be a condition of approval, as is Councils standard practice.

The subdivisions have been designed providing the access within the site via a shared internal driveway protected by an easement. This prevents additional access points on to Boorga Road, preserves the existing visual appearance of the streetscape, and protects roadside vegetation along Boorga Road which is identified as having biodiversity significance. This is consistent with the objectives for R5 zoned land by providing *residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality*. The internal driveway also meets the zoned objectives *to ensure that development in the area does not unreasonably increase the demand for public services or public facilities*, as a service road would need to be dedicated to Council as a local road and requiring ongoing Council maintenance.

Councils waste collection service currently collects waste from Boorga Road and there is ample space on the road reserve for bin placement.

Concern: Land Capability

The submission suggests that onsite effluent management assessments for each allotment undertaken by a suitably qualified consultant should be prepared and submitted to Council to demonstrate the site is capable and the proposed lot size is sufficient for the disposal of effluent.

Response: Council has consistently only required Land Capability Assessments to be undertaken for proposed lots with minimum site areas under 1 hectare and not connected to a reticulated sewerage system. Given that the proposed lots are 2 hectares, the lots are adequately sized to allow operation of any future aerated wastewater systems on site, and a Land Capability Assessment is not warranted.

Concern: Stormwater and Detention Basin

The submission indicates that preliminary stormwater and drainage calculations should be provided as a part of the subdivision assessment to demonstrate that the proposal does not adversely impact upon the Lake Wyangan drainage catchment.

Response: Should Council determine that onsite detention systems are necessary for this subdivision, detailed designs can be provided post consent.

We understand that the neighbours may be concerned with change of their neighbourhood, however we are of the opinion that the proposal would provide negligible impacts to the current levels of amenity, nor restrict the proposed or existing agricultural uses of adjoining lands. Lake Wyangan is an area which is set to undergo significant change as proposed by the adopted Lake Wyangan Masterplan, and this development would compliment the changing nature of Lake Wyangan.

The proposal complies with all applicable controls specified in the *Griffith Residential Development Control Plan 2020* relating to large lot subdivisions including buffers and access arrangements. We trust that this information is useful and clarifies the concerns regarding this proposal. If you have any enquiries, please contact me on 0438 422 768 or linden@miaplan.com.au

Kind Regards,



Linden Favero
MiaPlan



Figure 1: View North-east over the supply canal to adjoining land at the east of the sites. Land Further east in the background is active agricultural land (citrus farm).



Figure 2: View looking south-east of the property adjoining the subject sites.



Figure 3: View North along Boorga Road from the existing access location. The line of sight is clear and unobstructed. Sufficient space for the placement of waste bins on Boorga Road.



Figure 4: View South along Boorga Road from the existing access location. The line of sight is clear and unobstructed.



Development Assessment Report – DA 280/2023

PART ONE: GENERAL ADMINISTRATION

DA No:	280/2023(1)
Property description:	Lot 3 DP 1281086 236 Boorga Rd, Lake Wyangan
Description of proposed development:	Three (3) lot Torrens Title subdivision
Type of development:	Local
LEP Variation – Clause & %:	Clause 4.1(2) – 2%
Applicant's details:	Mrs J M Violi PO Box 8097 Griffith East NSW 2680
Landowner's details:	A & J Violi PO Box 1025 GRIFFITH NSW 2680
Landowner's consent:	All landowners have provided consent

PART TWO: SITE HISTORY

Site description & current land uses	<p>The subject site is located on Boorga Road, Lake Wyangan, and legally known as Lot 3 DP 1281086. The subject lot has a site area of 5.96 hectares.</p> <p>Existing development includes a dwelling and farm structures, along with landscaping and vegetable gardens and small-scale seasonal crops.</p> <p>An access connects to Boorga Road. A 5m wide internal driveway services both Lot 3 and adjoining Lot 4 DP 1281086 and includes an easement for access. The site has primary frontage and access to Boorga Road. A Murrumbidgee Irrigation canal adjoins the site at the rear on Lot 279 DP 1196899.</p> <p>The property is located outside of the Lake Wyangan Growth Area.</p>
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Figure 1: Aerial Image/Locality Plan**Figure 2: Site images – existing access to Boorga Rd****Previous development consents**

The following development consents are deemed relevant to the development:

- DA 144/2020 – subdivision of land creating Lot 3 & 4 DP 1281086
- DA 121/2021 – erection of farm shed (on Lot 4)
- CDC 504/2021 – dwelling and garage on Lot 3

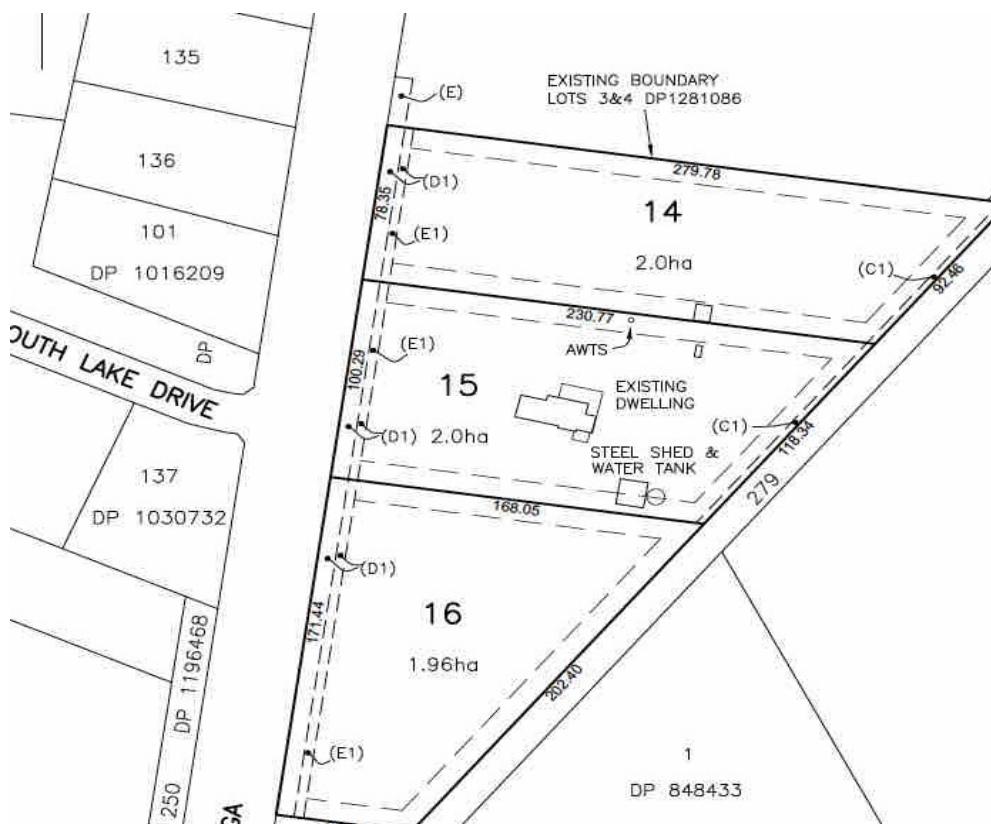
Previous subdivisions & related properties

The subject lot was created viz DA 144/2020 approved on 4 August 2020 which was subsequently modified on 1 December 2020.

In issuing the subdivision certificate (SCC 1541) Council was satisfied that all the conditions of development consent were met.

It is noted that no s7.11 contributions were levied at the time of the subdivision nor were there any conditions relating to contamination or the need for the remediation of agricultural land. The assessing officer, not having access to Council's property files, is unable to determine if Council considered the provisions of SEPP 55 Remediation of Land (which applied at the time) and the associated guidelines at the time of the DA. This matter is addressed in detail later in the report.

Restrictions on the title of land	There are two easements that affect Lot 3, the first being an 8m wide easement for the supply of water and the second being an 8m wide easement for the drainage of water. These easements will be maintained.
Easement or infrastructure affecting the land	The following infrastructure has been installed: <ul style="list-style-type: none"> An electricity line and a pole run is located near the entrance on Boorga Road An easement for water supply and drainage burden/benefit the lot.
Existing & proposed development on adjoining land	The adjoining development consists of agricultural land and associated farm dwelling and buildings (to the east) and large single storey dwellings (part of Pelican Shores (opposite)).
Pre-lodgement discussions	The person assessing the development application is unaware of any pre-lodgement discussions between the applicant and Council. KR Note: discussions were held with MIA Plan's Linden Favero as to whether this proposal and that over the adjoining Lot 4 DP 1281086 could be lodged as one application rather than two separate development applications. Acting DA Coordinator advised that under the provisions of Clause 4.6(6) the subdivision is not to contain 2 or more lots under the minimum lot size.
Any previous compliance or enforcement actions	The person assessing the development application has not been informed on any previous or current enforcement actions

Figure 3: Proposed subdivision layout¹¹ © PHL Surveyors

PART THREE: MATTERS FOR CONSIDERATION

SECTION 4.15 Evaluation

Development Assessment Panel (DAP) meeting held on 19 December 2023 with the following issues identified:

- Neighbour notification is required (due to c4.6 variation).
- The proposed development is not integrated development.
- Referrals under SEPP (Transport & Infrastructure) 2021 not required.
- Referral to Engineering Design and Approvals Manager required (for conditions).
- Referral to EHO required.
- Referral to Information Management Administrator required for future address details.
- Proposed development is permissible.
- Clause 4.6 variation assessment required due to non-compliance with minimum lot size requirements.
- Assessment against Griffith Residential DCP.
- Contaminated land assessment required.
- Section 64 and 7.12 contributions payable.

Additional information was requested including details of the dispersal areas of the AWTS and details of any structures to be maintained in the proposed setback areas and contaminated land assessment was requested.

SECTION 4.15 (1)(a)(i) Any environmental planning instrument.

Griffith Local Environmental Plan 2014

Permissibility

The proposed development is for the Torrens Title subdivision of land into three (3) large residential lots. The definition of subdivision is found in Section 6.2 of the Environmental Planning & Assessment Act, 1979 where it states:

1) *For the purposes of this Act, **subdivision** of land means the division of land into 2 or more parts that, after the division, would be obviously adapted for separate occupation, use or disposition. The division may (but need not) be effected:*

(a) by conveyance, transfer or partition, or

(b) by any agreement, dealing, plan or instrument rendering different parts of the land available for separate occupation, use or disposition.

The subject land is zoned R5 Large Lot Residential and under Part 2 (clause 2.6) of Griffith Local Environmental Plan 2014 the subdivision of land is permitted only with the consent of Council. On this basis the proposed development is considered permissible.

Aims and Objectives

The proposed development has been considered with regard to the aims of Griffith Local Environmental Plan 2014 as set down in Part 1, clause 1.2(2) which states:

- (a) to prevent unnecessary urban sprawl by promoting business, industrial, rural and residential uses within and adjacent to existing precincts related to those uses,*
- (b) to minimise land use conflict in general by creating areas of transition between different and potentially conflicting land uses,*
- (c) to provide a variety of development options to meet the needs of the community with regard to housing, employment and services,*
- (d) to manage and protect areas of environmental significance,*

- (e) *to recognise the historical development of the area and to preserve heritage items associated with it.*

The objectives for Zone R5 Large Lot Residential set down in the Land Use Table are as follows:

- To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.
- To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.
- To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.

Council may be satisfied that the proposed subdivision is consistent with both the aims of GLEP 2014 and objectives for the R5 Large Lot Residential Zone.

Principal Development Standards

Clause 4.1 of GLEP 2014 sets down the minimum lot size requirements for the subdivision of land. For land in the R5 zone, mapped in the Z1 precinct, the minimum lot size is 2ha. Both Lots 14 and 15 achieve the 2ha minimum, however **Lot 16, at 1.96ha, does not comply** with the development standard.

Since the introduction of the Local Government (Town Planning) Amendment Act in 1945 and the introduction of the earliest environmental planning instruments through to the introduction of the Environmental Planning and Assessment Act, 1979 it has been acknowledged that rigid adherence to pre-determined standards can lead to poor planning outcomes. This inflexibility was best described in the NSW Department of Environment and Planning² Circular No. B1 in 1989 when it stated that “*numerical standards are often a crude reflection of intent*”. It also said that a development may achieve the underlying purpose of a standard even though it does not comply and that such variations could be numerically small or large. The provisions of clause 4.6 are based on the SEPP 1 and Circular B1.

Clause 4.6 Exceptions to development standards establishes a mechanism for varying development standards applying under a standard instrument setting out the objectives at clause 4.6(1). The objectives being:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Clause 4.6(3)(a) and 4.6(3)(b) require that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

Clause 4.6(4)(a)(i) and (ii) require that development consent must not be granted to a development that contravenes a development standard unless:

- (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

Clause 4.6(4)(b) requires that the concurrence of the Secretary be obtained where concurrence cannot be assumed with clause 4.6(5) requiring the Secretary, if in deciding whether to grant concurrence consider:

- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
(b) *the public benefit of maintaining the development standard, and*
(c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

In support of the development application for the subdivision of Lot 3 DP 1281086 and in accordance with the provisions of clause 4.6(3) of Griffith Local Environmental Plan 2014 the applicant has requested that the consent authority to permit a variation to a development standard.

The assessment of the proposed variation follows the Varying Development Standards: A Guide published by NSW Department of Planning & Infrastructure and has incorporated the established principles set out in NSW Land and Environment caselaw.

Is compliance with the development standard is unreasonable or unnecessary in the circumstances of the case?³

Compliance with the minimum lot size standard set down in clause 4.1(3) is unreasonable and unnecessary in these circumstances for the following reasons:

- i. The existing pattern of subdivision comprises a mix of historical portions representative of early development of Griffith and more recent subdivision for the intergenerational transfer of land under previous environmental planning instruments. As a consequence of the historic cadastral boundaries and recent subdivision of land, lot sizes within the locality range in size from approximately 3500m² up 9.6 hectares. The proposed development is commensurate with the prevailing subdivision pattern.
- ii. The proposed development does not result in inappropriate fragmentation of rural land nor as a consequence of the non-compliance reduce the productive capacity of agricultural land.
- iii. The subdivision of the land would not impact on the natural and environmental values of the locality.
- iv. The proposed lot is of sufficient size to be used for purposes listed in the Land Use Table under Griffith LEP 2014 and meet the relevant objectives of the zone.

Is the underlying objective or purpose of the standard not relevant to the proposed development and therefore compliance unnecessary?⁴

The underlying objectives of the development standard set down in clause 4.1 and relevance is summarized in Table D1 below:

- *To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.*
- *To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.*
- *To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*

³ Winten Property Group Limited v North Sydney Council [2001], NSWLEC 46

⁴ Wehbe v Pittwater Council [2007], NSWLEC 827

The underlying objectives or purpose of the development standard are considered to the protection of the provision of residential housing in a rural setting while at the same time minimising impacts on environmentally sensitive locations and the scenic quality of the locality; to ensure that large residential lots do not hinder the proper and orderly development of urban areas; to ensure that the development does not unreasonably increase the demand for public services or facilities; and to minimise conflict between land uses within this zone and within adjoining zones.

The development standard of 2ha does not necessarily ensure satisfying the zone objectives. In this regard the objectives or purpose of the development standard are not relevant in this instance as a departure to the development standard of **2%** would have no more or less impact than a compliant development. It is considered that compliance would therefore be unnecessary.

Would the underlying objective or purpose be defeated or thwarted if compliance was required?⁵

No.

Has the development standard been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable?⁶

While there are a number of lots within the zone and in the immediate vicinity of the subject site that are below the minimum lot size requirements these are not an indication of the standard being virtually abandoned or destroyed by the actions of GCC as they relate to historic approvals under previous environmental planning instruments. While they do not indicate an abandonment, the size of the lots indicate that they have in the past met Council's requirements for development in the locality.

Is the zoning of the particular land unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary?⁷

The zoning of the land R5 Large Lot Residential is considered appropriate.

Are there sufficient environmental planning grounds to justify contravening the development standard?⁸

It is recognised that the provisions contained in environmental planning instruments change over time, and in the current circumstances the gazettal of GLEP 2014 has resulted in the adoption of development standards where development standards did not previously exist.

These changes should not negate the fact that Council has assessed and approved under the provisions of the previous environmental planning instruments, which enable the subdivision of land below 2 hectares. These lots that have already been developed do not have an adverse environmental impact is a strong indication that would justify contravention of the development standard.

Is the proposed development in the public interest because it is consistent with the objectives of the particular standard and the objectives for development in the zone?⁹

It is generally accepted that the public interest is best served by the consistent application of the requirements of the relevant Commonwealth and State government legislation, environmental planning instruments, development control plans and local policies so that any adverse effects on the surrounding area and the environment are avoided.

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

⁸ Four2Five Pty Ltd v Ashfield Council [2015], NSWLEC 1009, NSWLEC 90 & NSWCA 248

⁹ Randwick City Council v Micaul Holdings Pty Ltd [2016], NSWLEC 7

The proposed subdivision and the creation of one lot of less than 2ha does not prevent the objectives of the zone being achieved, as it does not prevent future use of the land for purposes identified in the Land Use Table of GLEP 2014.

The proposed development would not hinder Council's strategic objective, nor would it unduly restrict or prohibit future development of the site or adjoining land. That subdivision, and a number of other uses are not restricted by lot size controls is a broad indication that the development is not antipathetic to the objectives of the standards or of the zone.

Whether contravention of the development stand raises any matter of significance for the State or regional Environmental Planning?

The contravention of the development standard in this case does not raise an issue of State or regional planning significance as it relates to local and contextual conditions. The variation sought is in direct response to the broad-brush nature of the development standard across the local government area, that contain variety of lot sizes that have been created over time. That these lots accommodate existing dwellings is an indication that the subject land could be subdivided site without impacting upon the agricultural activities undertaken in the locality.

How would strict compliance hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Act?¹⁰

The references to section 5(a)(i) and (ii) of the Environmental Planning & Assessment Act, 1979 refer to the matter *Winten Property Group Limited v North Sydney Council* [2001] NSWLEC 46 and now should reference section 1.3 of the Act. The objects of the Act are:

- (a) *to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) *to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) *to promote the orderly and economic use and development of land,*
- (d) *to promote the delivery and maintenance of affordable housing,*
- (e) *to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) *to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) *to promote good design and amenity of the built environment,*
- (h) *to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) *to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) *to provide increased opportunity for community participation in environmental planning and assessment.*

Strict compliance with the development standard would not result in discernible benefits to achieving the objectives of specified in the Act.

Is there public benefit in maintaining the development standard?

In broad terms maintaining development standards is in the public interest as it fosters confidence through the consistent application of environmental planning instruments and other forms of development control, however there is public benefit in allowing a degree of flexibility in considered circumstances. In this instance, compliance for compliance's sake does not achieve any discernible public benefit and the use of the land (with a future dwelling) is considered appropriate based on:

- i. the lot is a similar size to other lots in the vicinity of the subject site.
- ii. The non-compliance would not result in any discernible visual difference in lot size.

¹⁰ *Winten Property Group Limited v North Sydney Council* [2001], NSWLEC 46
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Is the objection well founded?¹¹

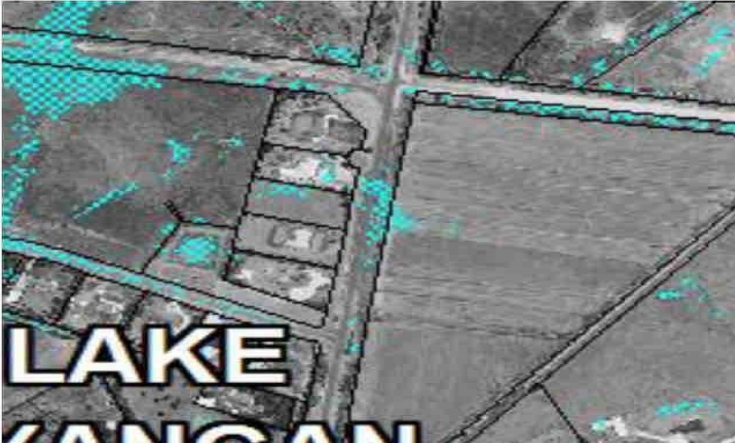
For reasons outlined in the preceding sections of the request the variation seeking to subdivide land and create a lot that the less than the development standard set down in clause 4.1(3) of GLEP 2014 is well founded as compliance with the standard is unreasonable as the development does not contravene the objects specified within section 1.3 of the Environmental Planning & Assessment Act, 1979 nor the objectives of the RU5 zone.

In accordance with NSW Planning & Environment Planning Circular PS 18-003 GCC is able to assume concurrence as the development standard relates to the minimum lot size for a dwelling on land that is zoned R5 Large Lot Residential.

Other Relevant LEP Provisions

<i>4.1 Minimum Lot Size</i>	2ha with a variation to one lot only of 2%
<i>4.6 Exemption to Development Standards</i>	An exemption request has been lodged with the application and is within officer delegation
<i>5.16 Subdivision of, or dwellings on, land in certain rural, residential or conservation areas</i>	<p>Clause 5.16 applies to the R5 Large Lot Residential zone and therefore must consider the provisions of clause 5.16(4) as the development involves the subdivision of land that contains and the future likely to contain a dwelling. In this regard Council may be satisfied that:</p> <ul style="list-style-type: none"> (a) The existing development on adjoining and nearby land, which includes residential development on large lots and agricultural land is unlikely to be detrimentally impacted by the subdivision and consequential residential development. (b) The proposed development is, through the current zoning of the land and list of permitted uses, is the preferred use of the land and is the predominant land use of land in the vicinity of the site. (c) The development and likely future development is compatible with current existing and likely future land uses of adjoining land. (d) The proposed building envelopes, easements and shared accessway will mitigate impacts on the locality.
<i>5.21 Flood Planning</i>	<p>A Planning Report from the NSW Department of Planning, Industry & Environment does not map the subject site as being flood affected, however part the greater area of Lake Wyangan, has been identified in the Lake Wyangan Floodplain Risk Management Study and Plan (August 2013) as potentially flood affected.</p> <p>Figure 4 – Extent of Flood Mapping</p>

¹¹ Winten Property Group Limited v North Sydney Council [2001], NSWLEC 46
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	 <p>The subject site is mapped as being within the Lake Wyangan Floodplain Risk Management Study & Plan 2013 and as small portion of the site is flood fringe at the 1% AEP event.</p> <p>The proposed subdivision and future residential uses are likely to be compatible with the flood function and behaviour on the land and would not adversely affects flood behaviour.</p>
<i>Part 6 Urban Release areas</i>	The subject site is not part of an Urban Release Area of Lake Wyangan
<i>7.1 Earthworks</i>	The proposed development will involve minor earthworks associated with the provision of infrastructure, including internal driveways and excavation for water and electricity.
<i>7.3 Terrestrial Biodiversity</i>	<p>The subject land has not been identified as Biodiversity on the Terrestrial Biodiversity Map and therefore the provisions of clause 7.3 do not apply.</p> <p>There are some areas of significance located on the road reserve of Boorga Road, however these areas will remain unaffected by this proposal.</p>
<i>7.10 Essential Services</i>	<p>The provisions of Part 7 of GLEP 2014 have been taken into consideration with the only additional local provisions deemed relevant being set out in clause 7.10. This clause states that the consent authority must be satisfied the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:</p> <ul style="list-style-type: none"> (a) the supply of water, (b) the supply of electricity, (c) the disposal and management of sewage, (d) stormwater drainage or on-site conservation, (e) suitable vehicular access. <p>Council's reticulated potable water network runs along Boorga Road opposite the subject site.</p> <p>The Essential Energy network supplies electricity to the property.</p>

	<p>The site is not connected to sewer and an onsite waste management system has been installed.</p> <p>The site is connected to Boorga Road via an existing all-weather gravel driveway.</p> <p>The proposed subdivision will require any amplification of services (water & sewer) and the right-of-carriageway will need to be constructed to an all-weather gravel standard and the driveway crossing upgraded to a bitumen or concrete seal as per Council's policy.</p>
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State Environmental Planning Policies

The following SEPPs apply to this development:

<i>Primary Production 2021</i>	The proposed development is generally consistent with the provisions of this SEPP.
<i>Resilience & Hazards 2021</i>	<p>The applicant has given some consideration to this SEPP, stating that:</p> <p><i>"As part of the General Amendment to the Griffith Local Environmental Plan 2014, the site assessment indicates that applications for residential development should include a detailed stage 2 site investigation around the curtilage of the proposed dwellings. Testing of the entire site is indicated as not necessarily due to ongoing hobby farming, small cropping paddocks, and fruit and vegetable gardens. The assessment by Council concludes that due to past uses the land is suitable in the present condition (or after remediation if required) for future residential purposes. As such, a Stage 2 site investigation is not necessary for this subdivision and can be requested with future applications for residential development."</i></p> <p>As the land has previously been used for agricultural purposes the provisions of Chapter 4 of this SEPP are to be taken into consideration, stating that a consent authority must not consent to the carrying out of any development on land unless:</p> <ul style="list-style-type: none"> (a) it has considered whether the land is contaminated, and (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose. <p>With regard to clause 4.6 of SEPP the land concerned:</p>

	<p>(a) not land within an investigation area</p> <p>(b) is land upon which a development which is identified in Table 1 of the Contaminated Land Planning Guidelines, that being agriculture, has previously been carried out.</p> <p>(c) the proposed development will enable a sensitive land use, that being development for residential purposes.</p> <p>The applicant has provided a preliminary site investigation report and the assessing officer has taken into consideration the following.</p> <p>The land is not within an investigation area however up and there is no clear evidence of the type of agriculture carried out upon the land. Examination of historic aerial images indicates that the land has not been planted for the purpose of horticulture, and that it may have been used largely for the purpose of pastures – most likely dairy farming. Contamination from dairy farms on soils would be from the impact of nutrients from effluent.</p> <p>The applicant has provided that:</p> <p><i>Agriculture - extensive agriculture: specifically, the following but excluding dipping -</i></p> <p><i>(a) the production of crops or fodder (including irrigated pasture and fodder crops) for commercial purposes,</i></p> <p><i>(d) a dairy (pasture-based) where the animals generally feed by grazing on living grasses and other plants on the land as their primary source of dietary requirements, and any supplementary or emergency feeding, or temporary agistment or housing for weaning, dipping, tagging or similar husbandry purposes, of the animals.</i></p> <p>The NSW Environmental Protection Authority (EPA) Contaminated Agricultural Land¹² document states that profiles of agricultural land indicate pesticide and chemical residues in soils as a result of farm management practices over a number of years. These chemicals are made up of both inorganic (such as arsenic) and organic pesticides (including DDT). The common use of arsenic was phased out in the 1950s and 1960s and the use organochlorine pesticides have been gradually decreased since the 1970s and by the late 1980s and early 1990s restricted or prohibited.</p> <p>The EPA document states that the contamination of land in NSW is mainly associated with intensive agriculture and horticulture, “such as the North Coast banana plantations,</p>
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¹² www.epa.nsw.gov.au/licensing-and-regulation/licensing/environment-protection-licences/authorised-officers/resources-and-training/contaminated-agricultural-land

	<p><i>the Namoi/Gwydir cotton growing areas and the Murrumbidgee Irrigation Area</i>".</p> <p>Given that the site has for the past 15 years has not been used as a commercial farm, the likelihood of contamination is minimal as provided in the submitted preliminary site investigation.</p> <p>The EPA note that even small-cropping, local orchards and market gardens all use pesticides and other farm chemicals and have published <i>Guidelines for Assessing Former Orchards and Market Gardens (June 2005)</i>. These guidelines are considered relevant to the application at hand.</p> <p>The <i>Guidelines for Assessing Former Orchards and Market Gardens</i> identify orchards as a block up to 10 hectares containing a single variety of tree planting. It is further stated in the Guidelines that the chemicals likely to have been applied would include insecticides, fungicides, herbicides and soil fumigants.</p> <p>With the exception of the inorganic chemicals and the organochlorines, the organic compounds used in many pesticides are not persistent and decompose in the soil within a year of application. In this regard, given the absence of any orchard the presence of organic compounds, in the soil, associated with the application of pesticides is likely to be low. The review in 1995 of "<i>soil sampling results from orchards and market gardens in NSW suggested that pesticide use has not resulted in significant contamination</i>"¹³ and that contamination, if any, was a result of chemical spills or leaks as opposed to the application of the chemicals for their intended use.</p> <p>It is known that Griffith City Council in assessing recent development applications involving former agricultural land, Council has considered land contamination reports which provide a broad indication that there is no contamination or that any residual contamination is within the prescribed concentrations to enable residential development to be undertaken. These reports generally align with the review of soil sampling results referred to in the <i>Guidelines for Assessing Former Orchards and Market Gardens</i>.</p> <p>Notwithstanding any previous consideration of contamination at the time the land was subdivided, Council can be reasonably satisfied that site is suitable for the proposed development on the basis that:</p> <ul style="list-style-type: none"> ▪ From aerial imagery dating back to 1958 there is no evidence of any permanent plantings on the land. ▪ Contamination reports held by Council for former intensive plant agricultural sites within the local government area
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¹³ NSW Dept of Environment and Conservation 'Guidelines for Assessing Former Orchards and Market Gardens' p.4
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	<p>suggests that there would be no contamination or residual contamination is within accepted levels; and</p> <p>Notwithstanding the above it is recommended that the following condition be imposed – this can be included as a restriction on the title of the land, as a means of informing future landowners of what is required should the land be developed for residential purposes.</p> <p><i>“Prior to the issue of the Subdivision Certificate, a restriction shall be included on the Section 88B instrument, to be registered on the title of proposed lots, that no dwelling house shall be erected and/or no further subdivision shall be undertaken, without a development application for such being accompanied by a Limited Stage 2 Site Investigation Report (including a soil sampling regime) assessing the lands suitability for rural residential development, under State Environmental Planning Policy (Resilience & Hazards) 2021 due to the previous use of the land for agriculture.”</i></p> <p><i>Note: Soil testing for pesticide residues shall be carried out on the site in accordance with Council's Policy. The results and report shall be submitted to council. Should the results of the soil testing be found to exceed the relevant thresholds, construction shall not commence until such time as remedial work has been undertaken, and further soil testing shows that the site meets the relevant thresholds.</i></p> <p>The proposed development taking into consideration the provisions of <i>State Environmental Planning Policy (Resilience & Hazards) 2021</i>; the <i>Contaminated Land Planning Guidelines</i>, Griffith City Council's <i>Contaminated Land Management Policy (EH-CP-203)</i> and <i>Guidelines for Assessing Former Orchards and Market Gardens</i> and it has been identified that the proposed land is likely suitable for the development.</p>
<i>Transport & Infrastructure 2021</i>	No referrals were required under this SEPP.

SECTION 4.15 (1)(a)(ii) Any Draft Environmental Planning Instruments

There are no draft environmental planning instrument relevant to this development application.

(Note: Griffith LEP 2014 Amendment No.7 came into effect on 20 October 2023 which resulted in the subject land being rezoned to R5 Large Lot Residential from RU4 Primary Production Small Holdings).

SECTION 4.15 (1)(a)(iii) any Development Control Plans

The application has been considered in terms of Griffith Residential DCP and the controls for a residential subdivision. Where a numerical standard applies, the evaluation will use the term “*complies*” or “*does not comply*” and where a non-numeric guide the terms “*satisfactory*” or “*unsatisfactory*” will be used, otherwise it will be considered “*not applicable*”.

TABLE 1 GRIFFITH RESIDENTIAL DEVELOPMENT CONTROL PLAN – LARGE LOT RESIDENTIAL SUBDIVISION

Control Type	Clause	Control	Compliance
Lot size and layout	4.1a	<i>The size of any lot subdivided must be in accordance with the relevant clauses in the GLEP.</i>	Lot 14 (2ha) complies. Lot 15 (2ha) complies. Lot 16 (1.96ha) does not comply. Variation under clause 4.6 of GLEP is supported, therefore no further assessment under DCP required.
	4.1b	<i>Proposed lots must be of a size and have a shape and dimensions to enable the siting of a dwelling and ancillary structures that:</i> <i>i. minimise impacts on adjoining lots including access to sunlight, privacy and views.</i> <i>ii. provide usable principal private open space.</i> <i>iii. provide vehicle access; and</i> <i>iv. protect or replace significant trees.</i>	Satisfactory.
	4.1c	<i>Larger Lots should be provided:</i> <i>i. In the vicinity of intensive agriculture</i> <i>ii. Fronting arterial roads</i> <i>iii. Fronting railway lines</i> <i>iv. Where site conditions require larger areas for onsite detention or onsite waste disposal</i>	Satisfactory.
	4.1d	<i>The subdivision design should avoid using access to a public road via a right of carriage way of battle axe lot. However should an r-o-c or battle axe lot be deemed acceptable, then the right of carriage way should be 8m with a constructed driveway of 5 m wide.</i>	Satisfactory.
	4.1e	<i>Building envelopes must be established on subdivision plans for lots <1ha:</i> <i>Front: 7.5m</i> <i>Side: 5.0m</i> <i>Rear: 5.0m</i> <i>Arterial road: 20m</i>	Complies.
Roads	4.1a	<i>Road networks (street length, intersection type, stagger and spacing) should be designed to control traffic speeds to appropriate limits.</i>	Satisfactory.
	2.4b	<i>Design of roads should provide appropriate carriageway widths, street trees, lighting and adequate footpaths and cycleways:</i> <i>i. Footpaths and cycleways must be provided in accordance with the Griffith Pedestrian and Bicycle Strategy – 2018; and</i> <i>ii. Roads must be designed in accordance with Council's Engineering Standards: Subdivision</i>	Satisfactory.

Control Type	Clause	Control	Compliance
		<i>and Development (as amended).</i>	
	2.4c	<i>Development Applications for large lot residential subdivisions should</i> <i>i. Include cross sections of each type of road proposed the hierarchy including required footpaths and cycleways.</i>	Satisfactory.
Utilities & Stormwater	4.3a	<i>Large lot residential subdivisions must meet the requirements of section 3.4 for essential services and 3.5 for storm water control.</i>	Satisfactory.
	4.3b	<i>Individual onsite detention basis for lots with areas of between 3000m² and 5000m² should be avoided</i>	Not applicable.
	4.3c	<i>Not applicable</i>	Not applicable
Management Of Communal Facilities	4.4a-b	<i>Not applicable</i>	Not applicable
Battle-Axe Lots	4.5a	<i>Battle-axe lots may only be permitted where it can be demonstrated that full street frontage for all lots is not achievable due to site constraints.</i>	Not applicable
	4.5b	<i>Only two battle-axe lots can share the same access handle.</i>	Not applicable
	4.5c	<i>Battle-axe lots must meet the following requirements:</i> <i>i. Single access handles must have a minimum width of 8 m and a maximum length of 50 m.</i> <i>ii. in calculating the area of a battle access lot the area of the access handle is to be excluded.</i> <i>iii. Not applicable</i> <i>iv. The access handle must be a sufficient width / area to accommodate the location of all services including a water meter located 1 m from any driveway and the placement of garbage and recycling bins.</i>	Not applicable.
	4.5d	<i>Battle-axe lots to facilitate a handle for the location of only a water meter are prohibited.</i>	Not applicable
Bushfire Prone Land	4.6a-c	<i>Not applicable</i>	-
Contamination	4.7d	<i>The Statement of Environmental Effects for subdivision to which this section relates should provide a history of the use of the site indicating whether there may have been any previous or current land uses that could have resulted in contamination of the site in accordance with Council's Contaminated Land Management Policy (EH_CP_203).</i>	Satisfactory subject to conditions.
	4.7e	<i>If there is a possibility the site could be contaminated from past uses, the development application must address the requirements of State Environmental Planning Policy No 55 (now Resilience & Hazards 2021) Contamination Planning Guidelines - Department of Urban Planning / Environment Protection</i>	Satisfactory

Control Type	Clause	Control	Compliance
		<i>Authority (as amended or replaced) and Council's Contaminated Land Management Policy (EH_CP_203).</i>	
Salinity	4.8a	<i>Not applicable</i>	Not applicable

Based on the above Table Council may be satisfied that the proposed development satisfies the provision of the DCP.

SECTION 4.15 (1)(a) (iv) *Matters prescribed by the regulation*

The regulations Sections 61 (demolition), 62 (fire safety), 63 (temporary structures) and 64 (upgrade of buildings) have been considered as part of this development.

SECTION 4.15 (1)(b) *the Likely impacts of the development.*

<i>Context and setting</i>	<p>The scenic quality and features of the landscape are not negatively impacted upon by the proposed subdivision, and it is not considered that the character and amenity of the locality will be affected.</p> <p>The development will not result in any loss of views or vistas, will not impact on anyone's visual or acoustic privacy, and will not overshadow any other property.</p>
<i>Access, transport and traffic</i>	The proposed subdivision will create the opportunity for further dwelling being erected upon the land, and as a consequence generate additional traffic. It is considered that the future traffic generated by the development is unlikely to have an adverse impact on traffic in the locality.
<i>Public domain</i>	The development will not impact on public recreation or the amount, location, design, use and management of public spaces.
<i>Utilities</i>	The proposed development will require the amplification of services with each lot requiring connection to a potable water supply, natural gas, electricity and telecommunications.
<i>Heritage</i>	<p>The subject site has not been identified as containing or within the vicinity of a heritage item listed in Schedule 5 of Griffith LEP 2014.</p> <p>Consideration of the potential impacts of development on Aboriginal heritage is a key part of the environmental impact assessment process under the Environmental Planning and Assessment Act 1979 (EP&A Act).</p> <p>As part of its due diligence, a search of the Aboriginal Heritage Information Management System (AHIMS) has been undertaken and the report (854256 13 January 2024) indicates that there are no aboriginal sites recorded in or near the location nor have there been any aboriginal places declared.</p>
<i>Other land resources</i>	There is unlikely to be any impact on land resources such as mineral extractive resources or water supply catchments, is expected.
<i>Water</i>	Council's reticulated potable water is available.

<i>Soils</i>	The proposed development will not have a detrimental impact on soil conditions.
<i>Air and microclimate</i>	There will be minimal impact in terms of odour or dust from the finished development, with conditions to be imposed regarding impacts during the construction phase of the subdivision.
<i>Flora and fauna</i>	Nil tree removal is to occur and no impact on flora or fauna is likely.
<i>Waste</i>	The waste generated by the subdivision including excavated contaminated soils (in found) will need to be disposed of at a licensed waste management facility.
<i>Energy</i>	Not applicable.
<i>Noise and vibration</i>	It is not envisaged the development would generate offensive noise pollution or vibrations due to its nature and imposed hours of operation of the use.
<i>Natural hazards</i>	Other than very minor flooding the site subject is not prone to natural hazards such as tidal inundation, subsidence, slip, mass movement or bushfires.
<i>Technological risks</i>	There are no known technological risks to people, property or the natural environment from the activities.
<i>Safety, security and crime prevention</i>	The subdivision works tanks would not pose any risk in terms of criminal activity, safety, or security
<i>Social impact in the locality</i>	There are no social benefit or cost in terms of social cohesion, community structure, character, values or beliefs, social equity, socio-economic groups, or the disadvantaged, and social displacement, are expected.
<i>Economic impact in the locality</i>	The proposed development is unlikely to have an adverse economic impact in the locality.
<i>Site design and internal design</i>	The proposed site design is considered satisfactory and there are no internal changes proposed.
<i>Construction</i>	Should the application be approved conditions of consent will be placed on the development to ensure that no nuisance, soil erosion and sedimentation transport occurs, and in relation to hours of construction.
<i>Cumulative impacts</i>	Nil.
<i>The suitability of the site for the development</i>	
<i>Does the proposal fit in the locality ?</i>	The proposed development is in keeping with the locality and there a no constraints posed by adjacent development that would restrict or otherwise prohibit the development from proceeding.
<i>Are the site attributes conducive to development ?</i>	Other than very minor flooding the site subject is not prone to natural hazards such as tidal inundation, subsidence, slip, mass

	<p>movement or bushfires.</p> <p>The soil characteristics are appropriate for the development, and there are no critical habitats, or threatened species, populations, ecological communities, or habitats on the site.</p> <p>The historic use of the site for <i>agriculture</i>, and suggests that the land may be contaminated, however given the absence of commercial farming activities over the past 15 years, levels are within acceptable guidelines. The proposed development application provides the opportunity to remove and dispose of contaminated soils if found. It is recommended a condition of consent be imposed to this effect.</p> <p>The subject site is zoned R5 and the permissibility of the development under Griffith Local Environmental Plan 2014 provides a broad indication that the site is suitable for the proposed development.</p> <p>Based on the assessment under this and other sections within this report it is considered that the site is suitable for the proposed development.</p>
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SECTION 4.15 (1) (d) any submissions made in accordance with the Act or the Regulations

The provisions of the Environmental Planning and Assessment Act 1979 the Environmental Planning and Assessment Regulation 2021 and Griffith City Council's Community Participation Plan set down consultation, concurrence, and advertising requirements for specific types of development applications and taking into consideration any submissions received in response to the notification process.

One submission was received objecting to the development application raising a number of concerns. A copy of the submission was forward to the applicant who was given the opportunity to respond.

The issues of concern, the response from the applicant and Council's position are set out in Table 2 below:

TABLE 2: SUBMISSIONS

Issues raised by objector; Response by applicant; Council Staff Assessment
<p>Issue: Right to farm</p> <ul style="list-style-type: none"> - Concerns have been raised that current and future agricultural practices may interfere with the amenity of future residential development. <p><i>Response by Application:</i> <i>The applicant contends that a 40m landscape buffer is unreasonable given the zone of the land.</i></p> <p><u>Council Staff Assessment:</u> A change in zoning boundaries will often cause interface conflicts which may be exacerbated as part of this development by virtue of increasing the residential density.</p> <p>Council generally concurs with the objector in that a 40m buffer is necessary but is prepared to accept that Murrumbidgee Irrigation canal system can be included in that calculation.</p> <p>It is recommended that a condition of consent be imposed requiring a 25m buffer zone be included.</p>
Issue: Proximity to frost fans & frost fan policy

Issues raised by objector; Response by applicant; Council Staff Assessment

- Suggests that an acoustic report be undertaken to address the potential impacts of frost fans.

Response by Application:

The applicant indicates that the land is not affected by any frost fan buffer including those approved by Council, but not yet installed and that the existing use of frost fans in the locality is intermittent.

Council Staff Assessment:

An acoustic report is not deemed necessary with this application as the site is not within 1000m of existing permanent frost control fans, either existing or under current approval. The submitter has indicated that there are frost fans in operation on an adjacent property but these are mobile fan units and not subject to development approval. Under Council's Frost Control Plan policy no provisions are relevant to this subdivision proposal in relation to acoustic treatment for the future dwellings.

Issue: Inadequate setbacks & buffers**Response by Application:**

The applicant considers that the proposed setbacks and buffers are satisfactory, and no increase is necessary.

Council Staff Assessment:

Council is of the view that the proposed setbacks are not entirely adequate. While it agrees that the buffer should incorporate the channel reserve, there is scope to increase the buffer within the boundary of the new lots so that a minimum of 40m can be achieved.

The buffer only needs to prevent the erection of a dwelling house or other habitable buildings within 40m of the neighbouring land (25m buffer + 15m channel reserve).

Issue: Landscaping

- Concerns have been raised that no landscaping details have been provided.

Response by Application:

The applicant has indicated that the need for landscaping at the time of subdivision is unwarranted and that landscaping would be something for future landowners to undertake.

Council Staff Assessment:

Council is of the view that a detailed landscape plan is not required as part of the application.

It is considered that Council can impose a condition of consent that requires landscaping within the buffer zones be provided at the time a development application is made for a dwelling.

Issue: Land contamination

- The applicant has raised concerns that the historical use of the land may have resulted in contamination.

Response by Application:

The applicant considers that they have properly addressed Council's Contaminated Land Management

Issues raised by objector; Response by applicant; Council Staff Assessment
<p><i>Policy (EH-CP-208).</i></p> <p><u>Council Staff Assessment:</u></p> <p>While Council in rezoning the land as part of the recent amendments to Griffith LEP 2014 deemed the land to be suitable for rural residential development, this does not necessary remove the potential that contamination may exist as part of previous agricultural practices.</p> <p>A preliminary site investigation was undertaken, being a desktop historic review, which provided aerial photography back to 1958, illustrating that the site was primarily used for fodder cropping.</p> <p>It is recommended that in order for Council to satisfy itself that the land is suitable, a limited phase 2 land contamination assessment be carried out and that remediation measures (if any) be carried out prior to the development of land for residential purposes. It is considered that this could be achieved by way of condition.</p>
<p>Issue: Access</p> <ul style="list-style-type: none"> - Concerns have been raised in respect to the adequacy of the access to the site and suggest that a proper service road be constructed to assist emergency services. <p><i>Response by Application:</i></p> <p><i>The applicant contends that the proposed means of access to Boorga Road is adequate.</i></p> <p><u>Council Staff Assessment:</u></p> <p>In approving the previous subdivision of land, Council restricted the development to a single crossing to Boorga Road. This single crossing is to be maintained, with a right-of-carriageway being extended to allow each lot to connect to the existing crossing.</p> <p>The existing crossing is however to be upgraded to a bitumen seal. A condition to that effect has been imposed.</p> <p>It is also recommended that the right-of-carriageway be constructed to an all-weather gravel standard (as a minimum) to facilitate access to each lot for future residents and emergency services vehicles.</p>
<p>Issue: Land capability assessment</p> <ul style="list-style-type: none"> - An onsite effluent management system assessment is required for each. <p><i>Response by Application:</i></p> <p><i>The applicant states that Council only requires the submission of a land capability assessment when lots are created are less than one (1) hectare in area.</i></p> <p><u>Council Staff Assessment:</u></p> <p>Council only requires the submission of a land capability report if the lots created are one (1) hectare or less.</p> <p>As each lot is greater than a hectare, a land capability report is unnecessary.</p>
<p>Issue: Stormwater detention</p>

Issues raised by objector; Response by applicant; Council Staff Assessment

- Preliminary calculations should be provided to demonstrate that the proposed subdivision will not have any impact.

Response by Application:

The applicant indicates that should Council require onsite detention, this matter could be addressed by way of condition.

Council Staff Assessment:

The subdivision itself will result in any change to how stormwater is managed.

It is recommended that a condition be imposed informing the applicant that stormwater is not to cross property boundaries without a proper easement, and that any s88B instrument inform future owners that stormwater detention will be required upon future development of land where the impervious surface areas are increased.

The public interest

The provisions of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979 provides an overarching requirement to consider the public interest. It is considered that the public interest is best served by the consistent application of the requirements of the relevant Commonwealth and State government legislation, environmental planning instruments, development control plan, Council policy, and by Council ensuring that any adverse effects on the surrounding area and the environment are avoided.

<i>Community Participation Plan</i>	Notification required due to the clause 4.6 variation. One submission was received objecting to the application.
<i>Section 7.12 (94A) Contributions Plan</i>	Council is entitled to impose a condition requirement the payment of a s7.12 levy. The amount payable is 1% of the nominated value of works over \$300,000. In this instance no contributions are payable as the value of works are less than \$100,000.
<i>Section 64 Developer Services Plans</i>	Section 64 contributions are payable for the two (2) additional lots created in relation to water only based on the NSW Water Directorate requirement for 1.2 equivalent tenements for lots greater than 2,000m ² .
<i>Engineering Guidelines: Subdivision and Development Standards</i>	The application has been referred to Council's Engineering Design and Approvals Manager for the imposition of conditions. Note: Connection to Council's sewer is not required. Only a single access to Boorga Road will be permitted via a shared access.
<i>Building near sewer and water assets</i>	Works greater than 5 metres from water and stormwater mains.
<i>Onsite Detention Policy</i>	The development falls outside OSD affected land.
<i>Sealing of Parking & Manoeuvring Areas</i>	Proposed driveways to be constructed of all-weather gravel.
<i>Tree Policy</i>	Tree removal is not proposed.
<i>Contaminated Land Policy</i>	A preliminary site investigation has been made which gives Council sufficient information to determine the application,

	however it is considered that a limited phase two assessment should be made at dwelling house application stage for the two vacant lots.
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Table of Contributions Required – Water, Sewerage & Drainage

Type of contribution	Location	Amount per tenement	Number of tenements	Amount to be paid
Water supply	Griffith	\$ 8,695.00	2.4 ET	\$20,868.00
Total				\$20,868.00

On the basis that the proposed development is considered to be consistent with the aims and objectives of Griffith Local Environmental Plan 2013 and other relevant environmental planning instruments, development control plans or policies; is consistent with Land and Environment Court Planning Principles; and is not contrary to any Commonwealth or State government legislation and policies it is therefore unlikely to raise any issues that are contrary to the public interest.

PART FOUR: DETERMINATION

It is recommended that Development application 280/2023(1) be determined as **APPROVED**, subject to conditions of consent, including:

- Imposition of conditions provided by Council's Engineering Design and Approvals Manager.
- Imposition of conditions provided by Council's Environmental Health Officer.
- Payment of section 7.12 contributions.
- Payment of section 64 contributions for water.
- Stormwater from the proposed dwelling is to be directed into the existing drainage system (via existing/proposed easements)
- The driveway, between the road carriageway and the property boundary is to be upgraded and constructed of concrete or bitumen seal.
- Internal driveways to be constructed of all-weather gravel.
- Prior to the issue of the Subdivision Certificate, a restriction shall be included on the Section 88B instrument, to be registered on the title of proposed lots, that no dwelling house shall be erected and/or no further subdivision shall be undertaken, without a development application for such being accompanied by a Limited Stage 2 Site Investigation Report (including a soil sampling regime) assessing the lands suitability for rural residential development, under State Environmental Planning Policy (Resilience & Hazards) 2021 due to the previous use of the land for agriculture.

Note: Soil testing for pesticide residues shall be carried out on the site in accordance with Council's Policy. The results and report shall be submitted to council. Should the results of the soil testing be found to exceed the relevant thresholds, construction shall not commence until such time as remedial work has been undertaken, and further soil testing shows that the site meets the relevant thresholds.

Assessment Officer

Signature:

Name: Steven Parisotto
Title: Principal, PARISPLAN URP (Consultant)
Date: 13 January 2024

Peer Reviewing Officer / Delegated Officer

Signature:

Name: Kerry Rourke
Title: Acting Development Assessment Coordinator
Date: 08 March 2024

Attachment A – Draft Conditions of Consent

Administrative Conditions

The development must be carried out in accordance with the following conditions of consent.

1. Approved Development

Development consent has been granted for three (3) lot Torrens Title subdivision, with Clause 4.6 Exception to minimum Lot Size at Lot 4 DP 1281086, 236 Boorga Road LAKE WYANGAN.

It is advised that the proposed development has been assessed in regards to the provision of Clauses 2.8, 4.1 and 4.6 of the Griffith Local Environmental Plan 2014.

The development must be implemented in accordance with Development Application No. 280/2023(1) accepted by Council on 18 December 2023 and the below mentioned plans and/or documents, except where amended in red on the attached plans or modified by the conditions of this consent.

Drawing / Plan	Date Accepted by Council	Prepared or Drawn By
Subdivision Plan	18 December 2023	PHL Surveyors

Document	Date Accepted by Council	Prepared or Drawn By
Statement of Environmental Effects	18 December 2023	MIA Plan
Clause 4.6 Variation Request	18 December 2023	MIA Plan

If there is any inconsistency between the approved plans and documents referred to above, the conditions shall prevail.

2. Construction Approval (Civil Works)

Prior to construction of the approved development, it is necessary to obtain a Construction Approval (Civil Works). This approval can only be issued by Council. An Application for Construction Approval (Civil Works) form, complete with detailed plans and specifications, shall be submitted to Council for the Construction Approval (Civil Works).

3. Provision of Services

The applicant is to be responsible for all amplification, extension and adequate provision for connection to services at their own expense. The work is to be in accordance with Council's *Engineering Guidelines – Subdivisions and Development Standards* and relevant authorities' specifications.

4. Lapsing of Consent

In accordance with Section 4.53 of the Environmental Planning and Assessment Act, 1979 this consent is valid for a period of five (5) years from the date of consent.

Note 1: Development consent for the purpose of the erection of a building or the subdivision of land or the carrying out of a work does not lapse if building, engineering or construction work relating to the development is lawfully and physically commenced on the land to which the consent applies before the date on which the consent would otherwise lapse.

Note 2: Development consent for the purpose of the use of the land, building or work the subject of the consent does not lapse if it is actually commenced the date on which the consent would otherwise lapse.

5. Damage to Council property

If any damage is occasioned to Council property during construction and associated works, the cost of repairs will be recoverable. It is therefore requested that any damage which is obvious before works commence be immediately notified to Council to avoid later conflict.

6. Existing Services

The applicant must check that the proposed works do not affect any Council, electricity, telecommunications, gas or other services. Any required alterations to services will be at the developer's expense.

7. Tree Preservation

The applicant is advised that the land is subject to Council's Tree Policy and the requirements of that policy are to be strictly adhered to. Should the applicant/owner require advice in this regard they are to contact Council's Parks and Gardens Department.

8. Aboriginal Heritage

If any Aboriginal object is discovered and/or harmed in, or under the land, while undertaking the proposed development activities, the proponent must:

1. Not further harm the object.
2. Immediately cease all work at the particular location.
3. Secure the area so as to avoid further harm to the Aboriginal object.
4. Notify the Department of Planning, Industry and Environment as soon as practical on 131555, providing any details of the Aboriginal object and its location.
5. Not recommence any work at the particular location unless authorised in writing by the Department of Planning, Industry and Environment.

In the event that skeletal remains are unexpectedly encountered during the activity, work must stop immediately, the area secured to prevent unauthorised access and NSW Police and the Department contacted of Planning, Industry and Environment.

9. Other Cultural Heritage

Should any cultural artefacts, archaeological relics or any object having interest due to its age or association with the past be located during the course of works, all works are to cease immediately and notification shall be provided to the Office of Environment and Heritage in accordance with the *National Parks and Wildlife Act 1974*. Work shall not recommence in the area until this is authorised by the Office of Environment and Heritage.

Note. Depending on the significance of the object uncovered, an archaeological assessment and excavation permit under the Heritage Act 1977 may be required before further the work can continue.

10. Rural Numbering

The subject properties have been allocated the following rural numbers of:

- Proposed Lot 11 – 244 Boorga Road
- Proposed Lot 12 – 242 Boorga Road
- Proposed Lot 13 – 240 Boorga Road

These numbers shall be reflective and permanently displayed in a prominent position that is clearly visible from the public road at all times.

Prior to Commencement of Works

The following conditions need to be met prior to the commencement of works. The necessary documentation and information must be provided to the Principal Certifying Authority (PCA), as applicable.

11. S138 Roads Act

Prior commencement of works, a Section 138 Roads Act application, including payment of fees, shall be lodged with Griffith City Council, as the Roads Authority for any works required within a public road. These works may include but are not limited to:

- a). Vehicular crossings (including kerb reinstatement of redundant vehicular crossings)
- b). Road opening for utilities and stormwater (including stormwater connection to Council Infrastructure).
- c). Road Occupancy or road closures

All works shall be carried out with the Roads Act approval, the development consent including the stamped plans and Griffith City Council specifications.

Note 1: Approvals may also be required from the Roads and Maritime Service (RMS) for classified roads.

Note 2: The application is to be made prior to the issue of the Construction Certificate but does not have to be approved by the Roads Authority prior to the issue of that certificate.

12. Traffic Control Plan (TCP)

A traffic control plan is to be submitted to Council satisfying the provisions of Australian Standard 1742.3, for acceptance **prior to the commencement of work within Council's road reserve**. Strict compliance to the traffic control plan is to be maintained throughout the duration of the construction work.

13. Sedimentation and Erosion Controls

Effective dust, noise, sedimentation and erosion controls are to be implemented prior to the commencement of site works. This is to include (as a minimum):

- (a) the installation of a sediment fence with returned ends across the low side of the works; and
- (b) a temporary gravel driveway into the site. All vehicles needing to access the site are to use the temporary driveway.

The control measures are to be installed **prior to the commencement of site works** and maintained during works in order to ensure that site materials do not leave the site and/or enter the stormwater system and to maintain public safety/amenity.

14. External Service Providers

Prior to the commencement of works written advice shall be obtained from the electricity supply authority, an approved telecommunications carrier and an approved gas carrier (where relevant) stating that satisfactory arrangements have been made to ensure provision of adequate services to the development.

During Construction

The following conditions of consent must be complied with at all times during the demolition, excavation and construction of the development.

15. Sedimentation and Erosion Controls

The approved erosion and sediment control measures shall be implemented and maintained during works.

16. Hours of Work

The principal certifier must ensure that building work, demolition or vegetation removal is only carried out between:

7.00am to 6.00pm on Monday to Saturday.

The principal certifier must ensure building work, demolition or vegetation removal is not carried out on Sundays and public holidays, except where there is an emergency.

Unless otherwise approved within a construction site management plan, construction vehicles, machinery, goods or materials must not be delivered to the site outside the approved hours of site works.

Note: Any variation to the hours of work requires Council's approval.

17. Contaminated Land Unexpected Finds

In the instance that works cause the generation of odours or uncovering of unexpected contaminants, works are to immediately cease, Council is to be notified and a suitably qualified person appointed to further assess the site.

Prior to the issue of the Subdivision Certificate

Before Council will release the subdivision plan, you will need to demonstrate compliance with the following conditions. The necessary documentation and information must be provided to the Principal Certifying Authority (PCA), as applicable.

18. Subdivision Certificate

A Subdivision Certificate must be issued prior to lodgement of the Final Plan of Survey with the Land Registry Services. An application for a Subdivision Certificate is required upon completion of all conditions of consent. The application is to be lodged with the Principal Certifier via the NSW Planning Portal.

19. Compliance with Conditions of Consent

The applicant is to ensure that all conditions of Development Application No. 281/2023 are completed **prior to the issue of the Subdivision Certificate**.

20. Section 64 Water Supply, Sewerage and Drainage Contributions

Pursuant to Section 64 of the *Local Government Act 1993* and the *Water Management Act 2000*, this development requires a payment of a S64 contribution. The amount payable at the time of issue of this consent is set out in the table below.

Table of Contributions Required – Water, Sewerage & Drainage

Type of contribution	Location	Amount per tenement	Number of tenements	Amount to be paid
Water supply	Griffith	\$ 8,695.00	2.4 ET	\$20,868.00
Total				\$20,868.00

The total amount payable will be subject to review in accordance with Council's Revenue Policy current at the time of payment.

The contribution is to be paid **prior to the issue of the Subdivision Certificate**.

The contribution is exclusive of the fees for the connection of water services to the individual allotments. Payment is to be in the form of cash or bank cheque. Where bonding is accepted a bank guarantee is required.

Reason: Pursuant to Section 64 of the *Local Government Act 1993* and the *Water Management Act 2000*, the applicant is required to apply to Council for a Compliance Certificate under the provisions of S305 of the *Water Management Act 2000*.

21. Internal driveway

Prior to the issue of a Subdivision Certificate the internal driveway to proposed lot 11, lot 11 and Lot 13 is to be constructed of gravel to an all-weather standard in accordance with *Council's Engineering Guidelines – Subdivisions and Development Standards*.

22. Accessway upgrade

Prior to the issue of a Subdivision Certificate, the existing accessway servicing the subject development is to be re-sealed between the property boundary and the road carriageway off Boorga Road. The accessway shall include guideposts. The accessway is to be constructed in accordance with *Council's Engineering Guidelines – Subdivisions and Development Standards*.

23. S138 Roads Act Approval

Prior to the issue of a Subdivision Certificate, the Principle Certifying Authority shall ensure that all works associated with a S138 Roads Act approval have been inspected and signed off by Griffith City Council.

24. Right of Carriageway

Prior to the issue of the Subdivision Certificate a Right of Carriageway is to be created in accordance with Section 88B of the Conveyancing Act where vehicles cross property boundaries. Matters to be addressed in the instrument should include the width and location of the right of carriageway.

25. Restriction to User

Vehicular access to proposed Lots 11, 12 and 13 from Boorga Road is not permitted at any time. **Prior to the issue of a Subdivision Certificate**, a restriction to user shall be created over proposed Lots 11, 12 and 13 in accordance with Section 88E of the Conveyancing Act. The restriction is to specify that vehicular access to the created allotments off Boorga Road is not permitted at any time.

26. Restriction to User

Vehicular access to proposed Lot 11 from Jones Road is not permitted at any time. Prior to the issue of a Subdivision Certificate, a restriction to user shall be created over proposed Lot 11 in accordance with Section 88E of the Conveyancing Act. The restriction is to specify that vehicular access to Lot 11 off Jones Road is not permitted at any time.

27. Restriction to User

Prior to the issue of the Subdivision Certificate, a restriction shall be included on the Section 88B instrument, to be registered on the title of proposed lots, that no dwelling house shall be erected and/or no further subdivision shall be undertaken, without a development application for such being accompanied by a Limited Stage 2 Site Investigation Report (including a soil sampling regime) assessing the lands suitability for rural residential development, under State Environmental Planning Policy (Resilience & Hazards) 2021 due to the previous use of the land for agriculture.

28. Restriction to User - Landscaped Buffer

Prior to the issue of the Subdivision Certificate, a restriction shall be included on the Section 88B Instrument, to be registered on the title of the proposed lots, that prior to the issue of an Occupation Certificate for a dwelling house on each lot, a 10 metre wide landscaped buffer is to be planted along all boundaries with predominantly native

vegetation along the boundaries of the subject premises. The purpose of the buffer is to minimise the impact of the development on the streetscape.

29. Restriction to User - Buffer

Prior to the issue of the Subdivision Certificate, a restriction shall be included on the Section 88B Instrument, to be registered on the title of the proposed lots, that no habitable building shall be constructed within 25 metres of the eastern boundary of the proposed lots. The purpose of the buffer is to minimise the adjacent agriculture on the proposed future dwellings.

30. Easement for Services

Prior to the issue of the Subdivision Certificate easements shall be established pursuant to Section 88B of the *Conveyancing Act 1919* where services cross property boundaries. The location and widths of the easements are to be specified in the instrument for the purpose of protecting and identifying the services.

31. Stormwater Drainage

Adequate arrangements are to be made for the disposal of stormwater. Stormwater runoff shall not be permitted to flow over the property boundaries onto the adjoining properties unless legally created easements in accordance with Section 88B of the *Conveyancing Act* are created.

Detailed design drawings for the proposed stormwater drainage system are to be submitted to Council for approval in accordance with *Council's Engineering Guidelines – Subdivision and Development Standards*. All works relating to the stormwater drainage system are to be completed and inspected by Council **prior to the issue of a Subdivision Certificate**.

32. Notice of Arrangement for Electricity Provision

Prior to the issue of the Subdivision Certificate, a copy of the Notice of Arrangement (NOA) from Essential Energy which states that satisfactory supply arrangements have been made for the provision of electricity to the proposed development is provided to Council.

33. Approval to operate

Prior to the issue of a Subdivision Certificate, owners must obtain from Council an approval to operate the on-site sewage system on proposed lot 15.

An approval can only be issued once Council's Environment & Health Department have inspected the system and effluent disposal area and are satisfied the system has been installed and is currently working adequately in accordance with its NSW Health certificate of accreditation and the relevant Australian Standards and legislative requirements.

Details to accompany the application for an Approval to operate include the specifications of the existing on-site wastewater treatment facility and its effluent disposal area including tank capacity and location and a recent service report from a licensed plumber certifying they are in good working order and that the land application area is coping effectively with the current effluent load. The location of the tank and disposal area shall be shown accurately on a site plan. The site plan shall show how the tank and disposal area meet required buffer distances to the new proposed boundaries of the subdivision application.

Advisory Note: if the current system is confirmed to be failing, the applicant will need to submit an 'Approval to Alter' and engage the services of a suitably qualified person (e.g. a licensed plumber) to complete rectification works or upgrades to ensure that the system can operate effectively. These details shall be include in the application to Council.

If the system needs to be replaced with a new on-site sewage management system, an Application for an Approval to Install/Operate will need to be submitted prior to installation.

On-Going Requirements

The following conditions or requirements must be complied with at all times, throughout the use and operation of the development.

nil

Attachment C – Advisory Notes

The following information is provided for your assistance to ensure compliance with the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2021*, or other relevant legislation and Council's policies. This information does not form part of the conditions of development consent pursuant to Section 4.16 of the Act.

(1) Water meter location

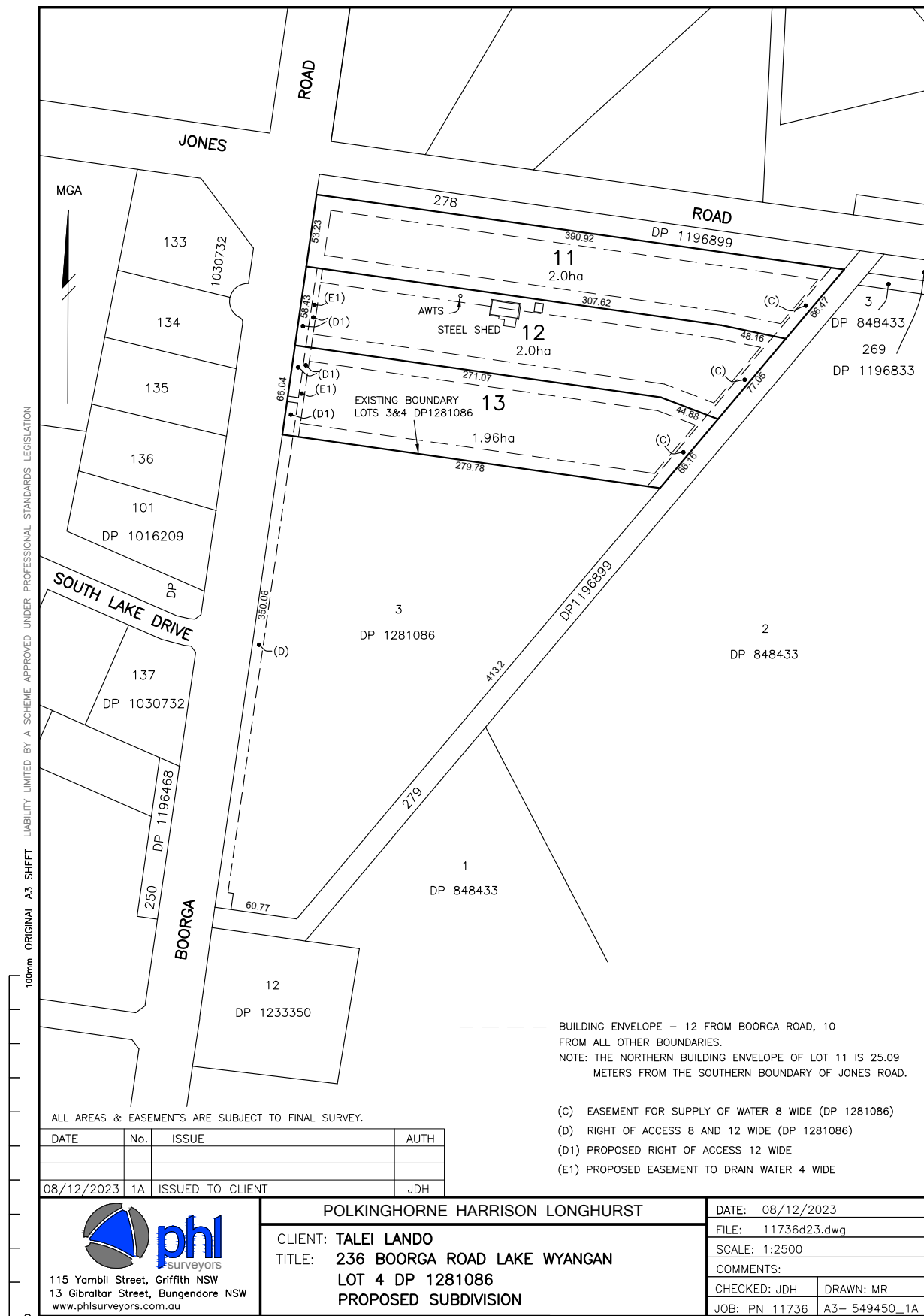
In accordance with Council's *Engineering Guidelines – Subdivision and Development Standards*, potable water services are not permitted to be located through easements. Property services shall be located such that the point where the meter assembly is located is within 300mm of the property side boundary.

Attachment D – Other Council Approvals and Consents

Section 68 Local Government Act 1993 Approvals

This consent includes the following approvals under Section 4.12 of the *Environmental Planning and Assessment Act 1979* and Section 68 of the *Local Government Act 1993*.

nil



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**PLANNING
POTENTIAL™**

**DA 281/2023
Submission
Lot 4 DP 1281086
236 Boorga Road, Lake Wyangan**

Prepared for Barbara & Neil Streat

January 2024

URBAN, RURAL & REGIONAL PLANNING CONSULTANTS

Lot 4 DP 1281086, 236 Boorga Road, Lake Wyangan

DA Submission



DEVELOPMENT DETAILS

Applicant:	Taiei Lando
Owner:	Undisclosed
Proposal:	3 lot Subdivision & Clause 4.6 Variation Request
Location:	Lot 4 DP 1281086, 236 Boorga Road, Lake Wyangan
Zone:	R5 Large Lot Residential

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Lot 4 DP 1281086, 236 Boorga Road, Lake Wyangan

DA Submission



Commentary on the Proposal DA 281/2023 - Lot 4 DP 1281086, 236 Boorga Road, Lake Wyangan

DA 281/2023 seeks Council consent for a three (3) lot Torens Title Subdivision of land that has recently been rezoned (via a Council Planning Proposal) from RU4 (Primary Production Small Lots) to R5 (Large Lot Residential). A concurrent DA was submitted for the adjoining land parcel to the south (Lot 3 DP 1281086) via DA 280/2023 which also seeks development consent for a three (3) lot Torens Title Subdivision.

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The application is on public exhibition to Thursday 25 January 2024.

This submission has been prepared on behalf of Barbara & Neil Streat as owners of land [REDACTED] Lake Wyangan as shown in Figure 1. The submission identifies issues of concern regarding the proposed development and the developments impact upon [REDACTED] Lake Wyangan.

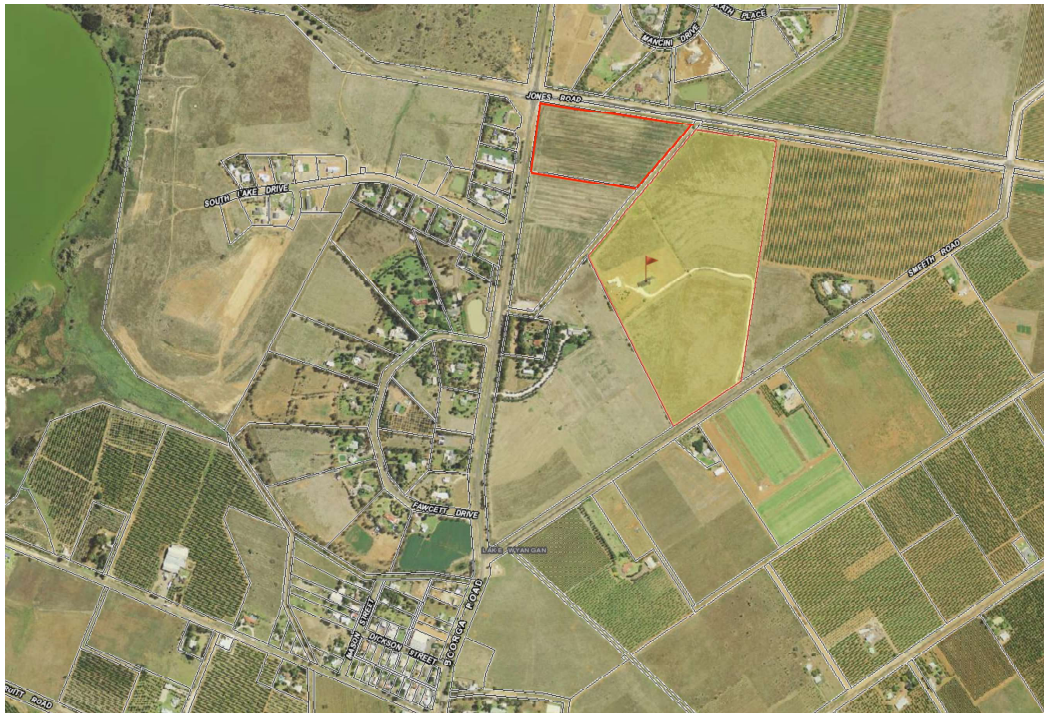


Figure1: Subject site at 236 Boorga Road and Location of Submission at 79 Smeeth Road

The main issues of concern include:-

- Right to Farm
- Proximity of land to be developed with adjoining land using Frost Control Fans
- Inadequate setbacks and buffer between proposed building envelopes and agricultural land
- Frost Control Fan Local Policy
- Landscaping

DA Submission



- Land contamination from past dairy and agricultural activities
- Access
- Land Capability
- Stormwater and Detention Basin

Right to Farm

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The Right to Farm concept is multi faceted with the common interpretation and the one commonly used in the NSW Right to Farm Policy (Department of Primary Industries) being the desire by farmers to undertake lawful agricultural practises without conflict or interference arising from complaints from neighbours and other land users.

The regional plan, Riverina Murray Regional Plan 2041 acknowledges the Right to Farm. Development of land that has been rezoned from an agricultural use (RU4) to a residential use (R5) needs to ensure there are adequate buffers between the land zones to minimise land use conflict and ensure the “Right to Farm” of the existing land users.

Zone Objectives

The subject land is zoned R5 Large Lot Residential under the provisions of the Griffith LEP 2014. The land to the development sites east has a zoning of RU4 Primary Production Small Lots (79 Smeeth Road).

The objectives of the R5 zone include:

- To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.
- To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.
- To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.

The stated objective “to minimise conflict between land uses within this zone and land uses within adjoining zones” reflects the transition between land to the development sites east and south of the subject site. The proposed subdivision seeks a 10m building envelope setback from the eastern boundaries. 10m is not considered to be an appropriate buffer or transition between an active agricultural zone and a residential zone for Proposed Lots 11, 12 and 13.

Council should consider a setback of 40m from the eastern boundary for the building envelope and include planted landscaping within the setback area to assist in the reduction of impact from general agricultural activities such as noise from agricultural machinery and spray drift.

The boundary setbacks should be stipulated on the registered subdivision plan.

Landscaping condition and wording at Councils discretion, however it is suggested that plantings need to be in place prior to the completion and occupation of any dwellings or any other structure.

Suggested wording may include the following:

Lot 4 DP 1281086, 236 Boorga Road, Lake Wyangan

DA Submission



Landscaping should be installed in accordance with an Approved Landscape Plan prepared by a suitably qualified person using appropriate species for the locality and shall be permanently maintained to the satisfaction of Council's Development Assessment Coordinator or as specified by Council. Landscaping along the allotments eastern boundary (rear) shall have a minimum width of 40m. Buffer plantings are to be chosen to ensure a height at maturity in excess of 6m and the submission of a Landscape Management Plan to ensure trees are maintained and irrigated with any dead or dying trees to be replaced.

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All landscaping plantings are to be in place prior to the completion and occupation of any dwellings or any other structure.

These conditions and requirements could also be placed as a restriction on the title so future purchasers of land are aware of their responsibilities as landowner.

Inadequate setbacks and buffer between proposed building envelopes and adjoining agricultural land

Land to the immediate east, Lot 2 DP 848433 has a land use zone of RU4 Primary Production Small Lots. The proposal seeks a 10m setback from the sites rear boundary for the proposed building envelope for Proposed Lots 11, 12 and 13. This setback of 10m is inadequate for a transition between agricultural land and large lot residential land.

The Griffith DCP requires dwellings on R5 land to have setbacks of 40m from agricultural land (RU1 and RU4). The setback area requires suitable landscaping with a height at maturity in excess of 6m using plant species that is appropriate to the locality. A Landscape Plan and Management Plan (to ensure trees and watered, maintained and replaced if dead or dying) by a suitably qualified consultant is required to be submitted and approved by Council.

The requirement for buffers and future landscaping should be placed on the title at subdivision stage so future landowners know and understand their responsibilities.

It is further acknowledged that the rear boundaries of these proposed lots adjoin the Murrumbidgee Irrigation Supply Channel.

Refer to above point.

Proximity of land to be developed with adjoining land using Frost Control Fans

The proposed development for subdivision along Boorga Road is within 1000m of land used for intensive plant agriculture utilising frost control fans.

Refer to the below discussion on Frost Control Fan Local Policy.

Frost Control Fan Local Policy

115 Smeeth Road (Lot 3 DP 848433) is situated to the east of the subject land, on the corner of Jones Road and Smeeth Road. The land is used for intensive plant agriculture and uses frost control fans as a part of their operation.

The land to be developed for future residential housing (subject to a future DA) whilst does not directly adjoin 115 Smeeth Road, the land is well within 1000m from land using frost control fans.

Lot 4 DP 1281086, 236 Boorga Road, Lake Wyangan

DA Submission



In order to protect surrounding operations, adequate buffers should be provided for any future building envelopes. The proposal indicates a 10m setback from the lands eastern (rear) boundary which is considered inadequate for dwellings' in proximity in the frost control fans and adjoining agricultural land in general.

As per Council's Frost Control Fan Policy it suggested that restrictions be placed on the title to address:

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- Location of building envelope with appropriate setbacks. A minimum of 40m setback is recommended from the rear boundary including planting of appropriate landscaping species suitable for the locality.
- Any future dwelling are to ensure noise attenuation measures are incorporated into the design and construction to ensure indoor noise criteria can be met for Noise Sensitive Zone (R5 land)

Location of affected residence	Outdoor Criteria (LAeq 15 min)	Indoor Criteria (LAeq 15 min)
Noise Sensitive Zone (this includes R5 land)	45dB(A) (max)	25dB(A)(max)

An acoustic report from a suitably qualified consultant should accompany any DA for a residential dwelling ensuring the proposed plans, material and dwelling siting is able to comply with the above noise requirements.

Landscaping

The proposal does not include any measures for landscaping along the development sites eastern and northern boundaries. Condition of landscaping measures to provide protection for future occupants, the adjoining lands agricultural pursuits and the road (Jones Road).

Refer to points on Right to Farm, Frost Control Fans policy, Zone Objectives, for R5 land and land use buffers.

Land Contamination

It appears that when the subject land was rezoned from RU4 to R5 as a part of the Planning Proposal General Amendment to Griffith Local Environmental Plan, contamination assessment was not undertaken. Contamination was identified as a constraint in Page 83 of its report to Council SSA 14 – Boorga Road. The report identifies that further investigation is required due to past agricultural activities. Future development of the site post rezoning (ie from RU4 to R5), requires a detailed Stage 2 Site Investigation.

It is unclear whether this investigation work has been undertaken however in Councils assessment of the proposed subdivision under the State Environmental Planning Policy (resilience and Hazards) 2021, the Applicant should be required to provide documentation to demonstrate there are no residual pesticides from past agricultural use that would impact the site for future residential use. The assessment needs to ensure Councils satisfaction at subdivision stage and should not be left to DA stage for future dwellings. Prospective purchasers need to be assured the land is safe for residential use.

Lot 4 DP 1281086, 236 Boorga Road, Lake Wyangan

DA Submission



Onsite Effluent

Onsite Effluent Management assessment for each allotment by a suitably qualified consultant should be prepared and submitted to Council to demonstrate the site is capable and the proposed lot size is sufficient for the disposal of effluent.

Access

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The proposal indicates the existing access point is to be used as a single access point off Boorga Road for a total of six (6) allotments covering this proposal and the concurrent proposal DA 280/2023. As landowners in the area, safety is paramount for road users and for the developments future owners and occupiers. The Griffith Subdivision Code in the Griffith Residential Development Code Plan references that Large Lot Residential Subdivision should avoid using access to a public road via a right of carriageway or battle-axe lot (refer section 4.1(d)).

Boorga Road is a designated B-double and school bus route. Consideration of safety of access, speed limit and suitably to allow emergency service vehicles should all be taken into consideration by Council as to how access from Boorga Road and any internal access is approved or indeed appropriate. No consideration by the subdivision design has taken into account appropriate location for the collection of waste and recycling services.

The alternative to a right of carriageway is for the development to require a public service road as has been required for Pelican Shores and the Wyangan Estate.

Should Council accept that a single access point is sufficient for traffic generation from four (4) additional lots and use for six (6) lots in total, the access point should be upgraded to Council specifications and be suitable to accommodate six (6) lots. The upgrade specifications need to also ensure the access is of a suitable standard for emergency service vehicles (including fire, RFS, police, ambulance and SES).

The RTA Guide for Traffic Generation specifies a dwelling generates nine (9) traffic movements per day. This equates to 54 traffic movements per day using one (1) access point.

The internal access way (should it be a right of carriageway) needs to also be upgraded to cater for the additional vehicle movements (including emergency service vehicles) including width and materials to a standard as specified by Council.

Appropriate easements and maintenance requirements should be conditioned as a part of any approval.

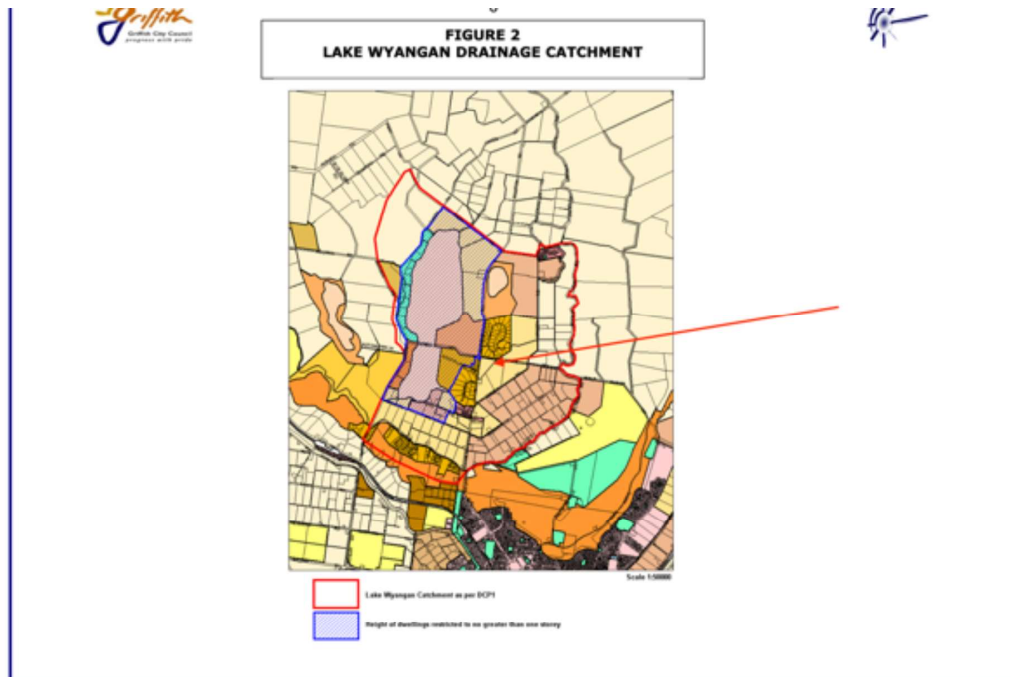
Stormwater and Detention Basin

The land is located within the Lake Wyangan Drainage Catchment as shown in Figure 2.

Preliminary stormwater and drainage calculations should be provided as a part of the subdivision assessment to demonstrate the proposal does not adversely impact upon the existing known capacity of the drainage catchment.

Lot 4 DP 1281086, 236 Boorga Road, Lake Wyangan

DA Submission



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Figure 2: Lake Wyangan Drainage Catchment

Any further enquiries can be made directly to our office on [REDACTED]

[REDACTED]
Amanda Rasmussen
Principal Planner
Planning Potential



The General Manager
Griffith City Council
1 Benerembah Street
GRIFFITH NSW 2680

15 February 2024

ATTN: Kerry Rourke

Dear Kerry

RE: DA 280/2023 Subdivision of Lot 3 DP 1281086 236 Boorga Road & DA 281/2023 Subdivision of Lot 4 DP 1281086 Boorga Road – Response to Objections

Please see following a response on behalf of the applicants and landowners A & J Violi and T Lando to the submissions raising concerns with the proposed subdivisions of Lot 3 & Lot 4 DP 1281086 at 236 Boorga Road, Lake Wyangan. We thank Griffith City Council staff for allowing us the opportunity to address the concerns which have been raised. We have reviewed the concerns and provide the following response.

The subject lots were included in the recent Planning Proposal for a General Amendment to the GLEP2014. The lots, including some adjoining lots were included as *Subject Site 14 – Boorga Road* for rezoning from *RU4 Primary Production Small Lots* with minimum lot sizes of 5 hectares, to *R5 Large Lot Residential* with 2 hectares minimum lot sizes. A subsequent application for subdivision of the land is the reasonable next step following this recent LEP amendment, as endorsed by the NSW Department of Planning.

Concern: Right to Farm, inadequate setbacks and buffer between proposed building envelopes and agricultural Land, and landscaping

The submission indicates that inadequate buffers are proposed between the site and adjoining lands. Land to the east (Lot 2 DP 848433, 79 Smeeth Road) is zoned *RU4 Primary Production Small Lots*. The submission claims that 10m is not considered to be an appropriate buffer or transition between an active agricultural zone and a residential zone, and that Council should consider a setback of 40m from the eastern boundary for the building envelope. This 40m is suggested to include planted landscaping within the setback area, and enforced via a restriction on the title.

1

Response: The proposed 10m building envelope is consistent with the requirements specified in the *GRDCP2020* for subdivisions of *R5 Large Lot Residential* zones. It is noted that a 15m wide lot (irrigation supply canal) adjoins the eastern boundary of the subject sites, separating adjoining land to the east (Lot 2 DP 848433, 79 Smeeth Road), which is presently vacant of any active agricultural activities. Combining the 15m wide canal lot and 10m building envelopes, this allows a 25m separation distance from the adjoining lot zoned *RU4 Primary Production Small Lots*. Enforcing a 40m landscaped buffer is excessive and unnecessary; there is no explicit requirement in the *GRDCP2020* which specifies that these lots must be landscaped as part of the subdivision. The appeal to future purchasers of large lot residential lots such as these, is the ability to select landscaping to their preference to integrate into future development of the land. It is likely given the large size of these lots (2ha), that future occupants may prefer to plant veggie patches and fruit orchards, or construct non-habitable structures such as storage sheds or garages in this area. It is therefore unreasonable to require a 40m planted buffer restriction on these proposed lots.

Concern: Frost control fans

The submission suggests that an acoustic report from a suitably qualified consultant should accompany any DA for a residential dwelling, ensuring the proposed plans, material and dwelling siting is able to comply with noise requirements.

Response: A search of constraints affecting this property did not show any existing frost fan buffers applying to the land, nor will the land be affected by the approved frost fans yet to be finalised in Nericon. It is noted that the nearby citrus farm mentioned in the submission operates moveable frost fans, and this is generally intermittent through June to August. It is not considered that an acoustic report, or enforcing noise attenuation measures are warranted.

Concern: Land contamination from past dairy and agricultural activities

Documentation should be provided to demonstrate there are no residual pesticides from past agricultural use that would impact the site for future residential use.

Response: An initial evaluation into the potential for land contamination has been provided to Council in accordance with GCC Contaminated Land Policy EH-CP-203 (December 2023).

Concern: Access

The submission raises concerns with safety for road users, future lot owners and occupiers, as well as querying an appropriate location for the collection of waste and recycling services. The submission suggests that the development provide a public service road similar to Pelican Shores and Wyangan Estate, the internal access way be upgraded to cater for the additional vehicle movements, and easements and maintenance requirements should be conditioned as a part of any approval.

Response: The driveway to the subject sites is considered the safest location in terms of avoiding conflict with the intersection of Boorga and Jones Roads, and Boorga Road and South Lake Drive, the location has clear sight distance on both directions of Boorga Road (See figures 3 & 4). The access and the internal driveway can be widened and constructed of an all-weather surface and it is understood that this will be a condition of approval, as is Councils standard practice.

The subdivisions have been designed providing the access within the site via a shared internal driveway protected by an easement. This prevents additional access points on to Boorga Road, preserves the existing visual appearance of the streetscape, and protects roadside vegetation along Boorga Road which is identified as having biodiversity significance. This is consistent with the objectives for R5 zoned land by providing *residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality*. The internal driveway also meets the zoned objectives *to ensure that development in the area does not unreasonably increase the demand for public services or public facilities*, as a service road would need to be dedicated to Council as a local road and requiring ongoing Council maintenance.

Councils waste collection service currently collects waste from Boorga Road and there is ample space on the road reserve for bin placement.

Concern: Land Capability

The submission suggests that onsite effluent management assessments for each allotment undertaken by a suitably qualified consultant should be prepared and submitted to Council to demonstrate the site is capable and the proposed lot size is sufficient for the disposal of effluent.

Response: Council has consistently only required Land Capability Assessments to be undertaken for proposed lots with minimum site areas under 1 hectare and not connected to a reticulated sewerage system. Given that the proposed lots are 2 hectares, the lots are adequately sized to allow operation of any future aerated wastewater systems on site, and a Land Capability Assessment is not warranted.

Concern: Stormwater and Detention Basin


The submission indicates that preliminary stormwater and drainage calculations should be provided as a part of the subdivision assessment to demonstrate that the proposal does not adversely impact upon the Lake Wyangan drainage catchment.

Response: Should Council determine that onsite detention systems are necessary for this subdivision, detailed designs can be provided post consent.

We understand that the neighbours may be concerned with change of their neighbourhood, however we are of the opinion that the proposal would provide negligible impacts to the current levels of amenity, nor restrict the proposed or existing agricultural uses of adjoining lands. Lake Wyangan is an area which is set to undergo significant change as proposed by the adopted Lake Wyangan Masterplan, and this development would compliment the changing nature of Lake Wyangan.

The proposal complies with all applicable controls specified in the *Griffith Residential Development Control Plan 2020* relating to large lot subdivisions including buffers and access arrangements. We trust that this information is useful and clarifies the concerns regarding this proposal. If you have any enquiries, please contact me on 0438 422 768 or linden@miaplan.com.au

Kind Regards,



Linden Favero
MiaPlan



Figure 1: View North-east over the supply canal to adjoining land at the east of the sites. Land Further east in the background is active agricultural land (citrus farm).



Figure 2: View looking south-east of the property adjoining the subject sites.



Figure 3: View North along Boorga Road from the existing access location. The line of sight is clear and unobstructed. Sufficient space for the placement of waste bins on Boorga Road.



Figure 4: View South along Boorga Road from the existing access location. The line of sight is clear and unobstructed.



Development Assessment Report – DA 281/2023

PART ONE: GENERAL ADMINISTRATION

DA No:	281/2023(1)
Property description:	Lot 4 DP 1281086 236 Boorga Rd, Lake Wyangan
Description of proposed development:	Three (3) lot Torrens Title subdivision with Clause 4.6 Lot size Variation to Development standard
Type of development:	Local
LEP Variation – Clause & %:	Clause 4.1(2) – 2%
Applicant's details:	Ms T Lando PO Box 1025 Griffith NSW 2680
Landowner's details:	Ms T Lando PO Box 1025 Griffith NSW 2680
Landowner's consent:	All landowners have provided consent

PART TWO: SITE HISTORY

Site description & current land uses	<p>The subject site is located on eastern side of Boorga Road, Lake Wyangan, and southern side of Lakes Road and legally known as Lot 4 DP 1281086. The subject lot has a site area of 5.96 hectares.</p> <p>Except for an existing farm shed (on proposed Lot 12) the subject land is vacant.</p> <p>An access connects to Boorga Road. A 5m wide internal driveway services both Lot 3 and adjoining Lot 4 DP 1281086 and includes an easement for access. The site has primary frontage and access to Boorga Road. A Murrumbidgee Irrigation canal adjoins the site at the rear on Lot 279 DP 1196899.</p> <p>The property is located outside of the Lake Wyangan Growth Area.</p>
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Figure 1: Aerial Image/Locality Plan



Figure 2: Site images – looking across proposed Lot 13 from Boorga Rd



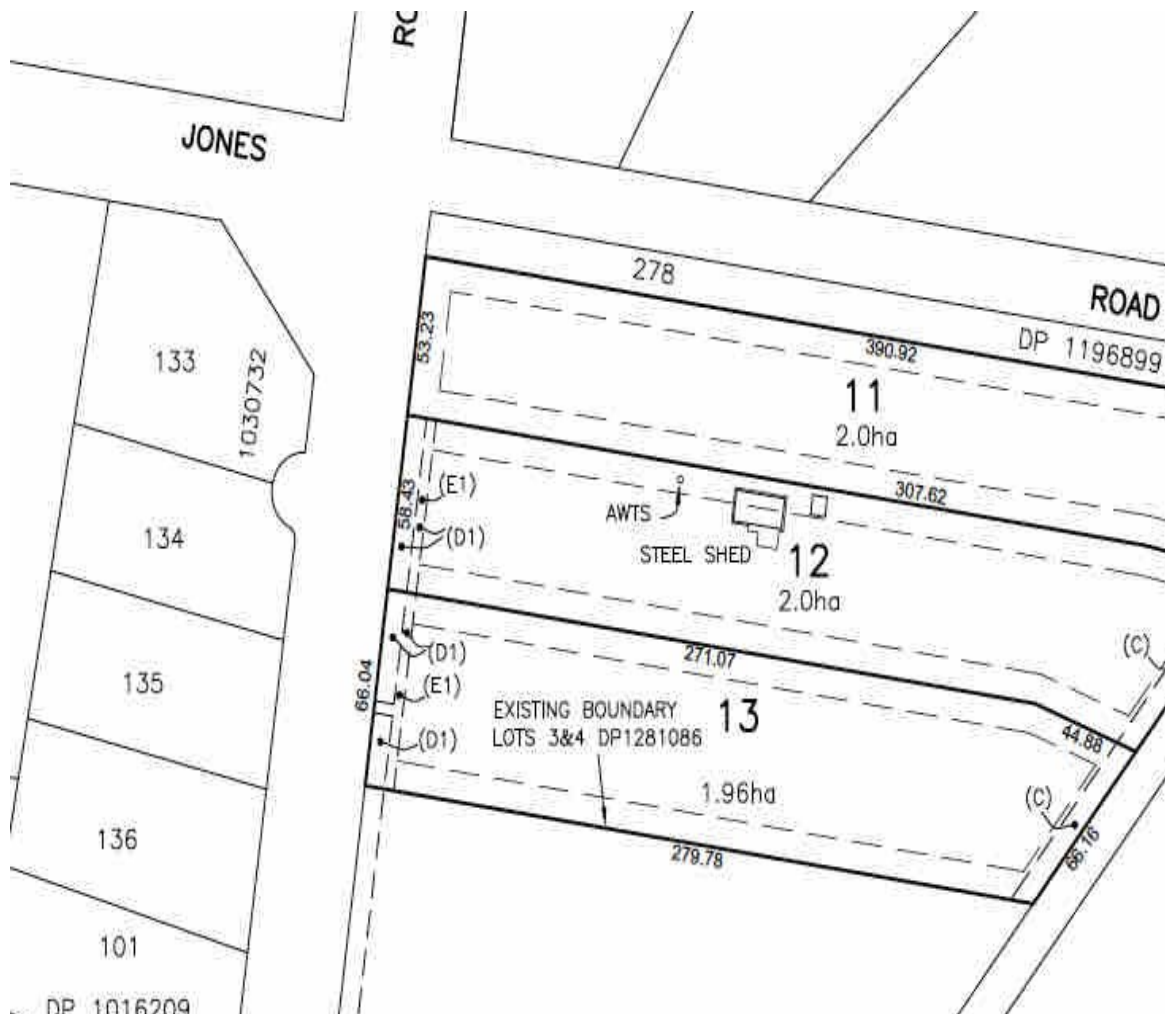
Figure 3: Site images – looking at proposed Lot 11 & shed on Lot 12 from Lakes Rd



Previous development consents

The following development consents are deemed relevant to the development:

	<ul style="list-style-type: none"> DA 144/2020 – subdivision of land creating Lot 3 & 4 DP 1281086 DA 121/2021 – erection of farm shed
Previous subdivisions & related properties	<p>There are no recent subdivision applications for this property. The subject lot was created viz DA 144/2020 approved on 4 August 2020 which was subsequently modified on 1 December 2020.</p> <p>In issuing the subdivision certificate (SCC 1541) Council was satisfied that all the conditions of development consent were met.</p> <p>It is noted that no s7.11 contributions were levied at the time of the subdivision nor were there any conditions relating to contamination or the need for the remediation of agricultural land. The assessing officer, not having access to Council's property files, is unable to determine if Council considered the provisions of SEPP 55 Remediation of Land (which applied at the time) and the associated guidelines at the time of the DA. This matter is addressed in detail later in the report.</p>
Restrictions on the title of land	There are two easements that affect Lots 4 in DP1281086, the first being an 8m wide easement for the supply of water and the second being an 8m wide easement for the drainage of water. These easements will be maintained.
Easement or infrastructure affecting the land	<p>The following infrastructure has been installed:</p> <ul style="list-style-type: none"> An electricity line and a pole run is located near the entrance on Boorga Road An easement for water supply and drainage burden/benefit the lot.
Existing & proposed development on adjoining land	The adjoining development consists of agricultural land and associated farm dwelling and buildings (to the east) and large single storey dwellings (part of Pelican Shores (opposite).
Pre-lodgement discussions	<p>The person assessing the development application is unaware of any pre-lodgement discussions between the applicant and Council.</p> <p>KR Note: discussions were held with MIA Plan's Linden Favero as to whether this proposal and that over the adjoining Lot 4 DP 1281086 could be lodged as one application rather than two separate development applications. Acting DA Coordinator advised that under the provisions of Clause 4.6(6) the subdivision is not to contain 2 or more lots under the minimum lot size.</p>
Any previous compliance or enforcement actions	The person assessing the development application has not been informed on any previous or current enforcement actions

Figure 3: Proposed subdivision layout¹

PART THREE: MATTERS FOR CONSIDERATION

SECTION 4.15 Evaluation

Development Assessment Panel (DAP) meeting held on 19 December 2023 with the following issues identified:

- Council employee is the applicant creating a potential (pecuniary) conflict of interest.
- Neighbour notification is required (due to c4.6 variation).
- The proposed development is not integrated development.
- Referrals under SEPP (Transport & Infrastructure) 2021 not required.
- Referral to Engineering Design and Approvals Manager required (for conditions).
- Referral to EHO required.
- Referral to Information Management Administrator required for future address details.
- Proposed development is permissible.
- Clause 4.6 variation assessment required due to non-compliance with minimum lot size requirements.
- Assessment against Griffith Residential DCP.
- Contaminated land assessment required.
- Existing building in buffer zone

¹ © PHL Surveyors

- Access via Lot 3 – no new access to Boorga Road permitted.
- Section 64 and 7.12 contributions payable.

Additional information was requested including details of the dispersal areas of the AWTs and details of any structures to be maintained in the proposed setback areas.

SECTION 4.15 (1)(a)(i) Any environmental planning instrument.

Griffith Local Environmental Plan 2014

Permissibility

The proposed development is for the Torrens Title subdivision of land into three (3) lots. The definition of subdivision is found in Section 6.2 of the Environmental Planning & Assessment Act, 1979 where it states:

- 1) *For the purposes of this Act, **subdivision** of land means the division of land into 2 or more parts that, after the division, would be obviously adapted for separate occupation, use or disposition. The division may (but need not) be effected:*

(a) by conveyance, transfer or partition, or

(b) by any agreement, dealing, plan or instrument rendering different parts of the land available for separate occupation, use or disposition.

The subject land is zoned R5 Large Lot Residential and under Part 2 (clause 2.6) of Griffith Local Environmental Plan 2014 the subdivision of land is permitted only with the consent of Council. On this basis the proposed development is considered permissible.

Aims and Objectives

The proposed development has been considered with regard to the aims of Griffith Local Environmental Plan 2014 as set down in Part 1, clause 1.2(2) which states:

- (a) to prevent unnecessary urban sprawl by promoting business, industrial, rural and residential uses within and adjacent to existing precincts related to those uses,*
- (b) to minimise land use conflict in general by creating areas of transition between different and potentially conflicting land uses,*
- (c) to provide a variety of development options to meet the needs of the community with regard to housing, employment and services,*
- (d) to manage and protect areas of environmental significance,*
- (e) to recognise the historical development of the area and to preserve heritage items associated with it.*

The objectives for Zone R5 Large Lot Residential set down in the Land Use Table are as follows:

- To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.
- To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.
- To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.

Council may be satisfied that the proposed subdivision is consistent with both the aims of GLEP 2014 and objectives for the R5 Large Lot Residential Zone.

Principal Development Standards

Clause 4.1 of GLEP 2014 sets down the minimum lot size requirements for the subdivision of land. For land in the R5 zone, mapped in the Z1 precinct, the minimum lot size is 2ha. Both Lots 11 and 12 achieve the 2ha minimum, however **Lot 13, at 1.96ha, does not comply** with the development standard.

Since the introduction of the Local Government (Town Planning) Amendment Act in 1945 and the introduction of the earliest environmental planning instruments through to the introduction of the Environmental Planning and Assessment Act, 1979 it has been acknowledged that rigid adherence to pre-determined standards can lead to poor planning outcomes. This inflexibility was best described in the NSW Department of Environment and Planning² Circular No. B1 in 1989 when it stated that “*numerical standards are often a crude reflection of intent*”. It also said that a development may achieve the underlying purpose of a standard even though it does not comply and that such variations could be numerically small or large. The provisions of clause 4.6 are based on the SEPP 1 and Circular B1.

Clause 4.6 Exceptions to development standards establishes a mechanism for varying development standards applying under a standard instrument setting out the objectives at clause 4.6(1). The objectives being:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Clause 4.6(3)(a) and 4.6(3)(b) require that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

Clause 4.6(4)(a)(i) and (ii) require that development consent must not be granted to a development that contravenes a development standard unless:

- (a) the consent authority is satisfied that:*
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

Clause 4.6(4)(b) requires that the concurrence of the Secretary be obtained where concurrence cannot be assumed with clause 4.6(5) requiring the Secretary, if in deciding whether to grant concurrence consider:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.*

In support of the development application for the subdivision of Lot 4 DP 1281086 and in accordance with the provisions of clause 4.6(3) of Griffith Local Environmental Plan 2014 the applicant has requested that the consent authority to permit a variation to a development standard.

The assessment of the proposed variation follows the Varying Development Standards: A Guide published by NSW Department of Planning & Infrastructure and has incorporated the established principles set out in NSW Land and Environment caselaw.

Is compliance with the development standard is unreasonable or unnecessary in the circumstances of the case?³

Compliance with the minimum lot size standard set down in clause 4.1(3) is unreasonable and unnecessary in these circumstances for the following reasons:

- i. The existing pattern of subdivision comprises a mix of historical portions representative of early development of Griffith and more recent subdivision for the intergenerational transfer of land under previous environmental planning instruments. As a consequence of the historic cadastral boundaries and recent subdivision of land, lot sizes within the locality range in size from approximately 3500m² up 9.6 hectares. The proposed development is commensurate with the prevailing subdivision pattern.
- ii. The proposed development does not result in inappropriate fragmentation of rural land nor as a consequence of the non-compliance reduce the productive capacity of agricultural land.
- iii. The subdivision of the land would not impact on the natural and environmental values of the locality.
- iv. The proposed lot is of sufficient size to be used for purposes listed in the Land Use Table under Griffith LEP 2014 and meet the relevant objectives of the zone.

Is the underlying objective or purpose of the standard not relevant to the proposed development and therefore compliance unnecessary?⁴

The underlying objectives of the development standard set down in clause 4.1 and relevance is summarized in Table D1 below:

- To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.
- To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.
- To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.

The underlying objective or purpose of the development standard are considered to the protection of the provision of residential housing in a rural setting while at the same time minimising impacts on environmentally sensitive locations and the scenic quality of the locality; to ensure that large residential lots do not hinder the proper and orderly development of urban areas; to ensure that the development does not unreasonably increase the demand for public services or facilities; and to minimise conflict between land uses within this zone and within adjoining zones. The development standard of 2ha does not necessarily ensure satisfying the zone objectives. In this regard the objectives or purpose of the development standard are not relevant in this instance as a departure to the development standard of 2% would have no more or less impact than a compliant development. It is considered that compliance would therefore be unnecessary.

Would the underlying objective or purpose be defeated or thwarted if compliance was required?⁵

No.

³ Winten Property Group Limited v North Sydney Council [2001], NSWLEC 46

⁴ Wehbe v Pittwater Council [2007], NSWLEC 827

⁵ Ibid.

Has the development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable?⁶

While there are a number of lots within the zone and in the immediate vicinity of the subject site that are below the minimum lot size requirements these are not an indication of the standard being virtually abandoned or destroyed by the actions of GCC as they relate to historic approvals under previous environmental planning instruments. While they do not indicate an abandonment, the size of the lots indicate that they have in the past met Council's requirements for development in the locality.

Is the zoning of the particular land unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary?⁷

The zoning of the land R5 Large Lot Residential is considered appropriate.

Are there sufficient environmental planning grounds to justify contravening the development standard?⁸

It is recognised that the provisions contained in environmental planning instruments change over time, and in the current circumstances the gazettal of GLEP 2014 has resulted in the adoption of development standards where development standards did not previously exist.

These changes should not negate the fact that Council has assessed and approved under the provisions of the previous environmental planning instruments, which enable the subdivision of land below 2 hectares. These lots that have already been developed do not have an adverse environmental impact is a strong indication that would justify contravention of the development standard.

Is the proposed development in the public interest because it is consistent with the objectives of the particular standard and the objectives for development in the zone?⁹

It is generally accepted that the public interest is best served by the consistent application of the requirements of the relevant Commonwealth and State government legislation, environmental planning instruments, development control plans and local policies so that any adverse effects on the surrounding area and the environmental are avoided.

The proposed subdivision and the creation of one lot of less than 2ha does not prevent the objectives of the zone being achieved, as it does not prevent future use of the land for purposes identified in the Land Use Table of GLEP 2014.

The proposed development would not hinder Council's strategic objective, nor would it unduly restrict or prohibit future development of the site or adjoining land. That subdivision, and a number of other uses are not restricted by lot size controls is a broad indication that the development is not antipathetic to the objectives of the standards or of the zone.

Whether contravention of the development stand raises any matter of significance for the State or regional Environmental Planning?

The contravention of the development standard in this case does not raise an issue of State or regional planning significance as it relates to local and contextual conditions. The variation sought is in direct response to the broad-brush nature of the development standard across the local government area, that contain variety of lot sizes that have been created over time. That these lots accommodate existing dwellings is an indication that the subject land could be subdivided site without impacting upon the agricultural activities undertaken in the locality.

⁶ Ibid.

⁷ Ibid.

⁸ Four2Five Pty Ltd v Ashfield Council [2015], NSWLEC 1009, NSWLEC 90 & NSWCA 248

⁹ Randwick City Council v Micaul Holdings Pty Ltd [2016], NSWLEC 7

How would strict compliance hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Act?¹⁰

The references to section 5(a)(i) and (ii) of the Environmental Planning & Assessment Act, 1979 refer to the matter *Winten Property Group Limited v North Sydney Council* [2001] NSWLEC 46 and now should reference section 1.3 of the Act. The objects of the Act are:

- (a) *to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) *to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) *to promote the orderly and economic use and development of land,*
- (d) *to promote the delivery and maintenance of affordable housing,*
- (e) *to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) *to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) *to promote good design and amenity of the built environment,*
- (h) *to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) *to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) *to provide increased opportunity for community participation in environmental planning and assessment.*

Strict compliance with the development standard would not result in discernible benefits to achieving the objectives of specified in the Act.

Is there public benefit in maintaining the development standard?

In broad terms maintaining development standards is in the public interest as it fosters confidence through the consistent application of environmental planning instruments and other forms of development control, however there is public benefit in allowing a degree of flexibility in considered circumstances. In this instance, compliance for compliance's sake does not achieve any discernible public benefit and the use of the land (with a future dwelling) is considered appropriate based on:

- i. the lot is a similar size to other lots in the vicinity of the subject site.
- ii. The non-compliance would not result in any discernible visual difference in lot size.

Is the objection well founded?¹¹


For reasons outlined in the preceding sections of the request the variation seeking to subdivide land and create a lot that the less than the development standard set down in clause 4.1(3) of GLEP 2014 is well founded as compliance with the standard is unreasonable as the development does not contravene the objects specified within section 1.3 of the Environmental Planning & Assessment Act, 1979 nor the objectives of the RU5 zone.

In accordance with NSW Planning & Environment Planning Circular PS 18-003 GCC is able to assume concurrence as the development standard relates to the minimum lot size for a dwelling on land that is zoned R5 Large Lot Residential. The 2% variation to the development standard of Clause 4.1, being less than 10% can be determined under officer delegation.

¹⁰ Winten Property Group Limited v North Sydney Council [2001], NSWLEC 46

¹¹ Winten Property Group Limited v North Sydney Council [2001], NSWLEC 46
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Other Relevant LEP Provisions

4.1 Minimum Lot Size	2ha with a variation to one lot only of 2%
4.6 Exemption to Development Standards	An exemption request has been lodged with the application and is within officer delegation
5.16 Subdivision of, or dwellings on, land in certain rural, residential or conservation areas	<p>Clause 5.16 applies to the R5 Large Lot Residential zone and therefore must consider the provisions of clause 5.16(4) as the development involves the subdivision of land that contains and the future likely to contain a dwelling. In this regard Council may be satisfied that:</p> <ul style="list-style-type: none"> (a) The existing development on adjoining and nearby land, which includes residential development on large lots and agricultural land is unlikely to be detrimentally impacted by the subdivision and consequential residential development. (b) The proposed development is, through the current zoning of the land and list of permitted uses, is the preferred use of the land and is the predominant land use of land in the vicinity of the site. (c) The development and likely future development is compatible with current existing and likely future land uses of adjoining land. (d) The proposed building envelopes, easements and shared accessway will mitigate impacts on the locality.
5.21 Flood Planning	<p>A Planning Report from the NSW Department of Planning, Industry & Environment does not map the subject site as being flood affected, however part the greater area of Lake Wyangan, has been identified in the Lake Wyangan Floodplain Risk Management Study and Plan (August 2013) as potentially flood affected.</p> <p>Figure 4 – Extent of Flood Mapping</p>  <p>The subject site is mapped as being within the Lake Wyangan Floodplain Risk Management Study & Plan 2013 and as small portion of the site is flood fringe at the 1% AEP event.</p>

	The proposed subdivision and future residential use of Lot 13 is likely to be compatible with the flood function and behaviour on the land and would not adversely affects flood behaviour.
<i>Part 6 Urban Release areas</i>	The subject site is not part of an Urban Release Area of Lake Wyangan
<i>7.1 Earthworks</i>	The proposed development will involve minor earthworks associated with the provision of infrastructure, including internal driveways and excavation for water and electricity.
<i>7.3 Terrestrial Biodiversity</i>	<p>The subject land has not been identified as Biodiversity on the Terrestrial Biodiversity Map and therefore the provisions of clause 7.3 do not apply.</p> <p>There are some areas of significance located on the road reserve of Boorga Road, however these areas will remain unaffected by this proposal.</p>
<i>7.10 Essential Services</i>	<p>The provisions of Part 7 of GLEP 2014 have been taken into consideration with the only additional local provisions deemed relevant being set out in clause 7.10. This clause states that the consent authority must be satisfied the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:</p> <ul style="list-style-type: none"> (a) the supply of water, (b) the supply of electricity, (c) the disposal and management of sewage, (d) stormwater drainage or on-site conservation, (e) suitable vehicular access. <p>Council's reticulated potable water network runs along Boorga Road opposite the subject site.</p> <p>The Essential Energy network supplies electricity to the property.</p> <p>The site is not connected to sewer and an onsite waste management system has been installed.</p> <p>The site is connected to Boorga Road via an existing all-weather gravel driveway.</p> <p>The proposed subdivision will require any amplification of services (water) and the right-of-carriageway will need to be constructed to an all-weather gravel standard and the driveway crossing upgraded to a bitumen or concrete seal as per Council's policy.</p>

State Environmental Planning Policies

The following SEPPs apply to this development:

<i>Primary Production 2021</i>	The proposed development is generally consistent with the provisions of this SEPP.
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Resilience & Hazards 2021	<p>The applicant has given some consideration to this SEPP, stating that:</p> <p><i>“As part of the General Amendment to the Griffith Local Environmental Plan 2014, the site assessment indicates that applications for residential development should include a detailed stage 2 site investigation around the curtilage of the proposed dwellings. Testing of the entire site is indicated as not necessarily due to ongoing hobby farming, small cropping paddocks, and fruit and vegetable gardens. The assessment by Council concludes that due to past uses the land is suitable in the present condition (or after remediation if required) for future residential purposes. As such, a Stage 2 site investigation is not necessary for this subdivision and can be requested with future applications for residential development.”</i></p> <p>As the land has previously been used for agricultural purposes the provisions of Chapter 4 of this SEPP are to be taken into consideration, stating that a consent authority must not consent to the carrying out of any development on land unless:</p> <ul style="list-style-type: none"> (a) it has considered whether the land is contaminated, and (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose. <p>With regard to clause 4.6 of SEPP the land concerned:</p> <ul style="list-style-type: none"> (a) not land within an investigation area (b) is land upon which a development which is identified in Table 1 of the Contaminated Land Planning Guidelines, that being agriculture, has previously been carried out. (c) the proposed development will enable a sensitive land use, that being development for residential purposes. <p>The applicant has provided a preliminary site investigation report and the assessing officer has taken into consideration the following.</p> <p>The land is not within an investigation area however up and there is no clear evidence of the type of agriculture carried out upon the land. Examination of historic aerial images indicates that the land has not been planted for the purpose of horticulture, and that it may have been used largely for the purpose of pastures – most likely dairy</p>
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	<p>farming. Contamination from dairy farms on soils would be from the impact of nutrients from effluent.</p> <p>The applicant has provided that:</p> <p><i>Agriculture - extensive agriculture:</i> specifically, the following but excluding dipping -</p> <p><i>(a) the production of crops or fodder (including irrigated pasture and fodder crops) for commercial purposes,</i></p> <p><i>(d) a dairy (pasture-based) where the animals generally feed by grazing on living grasses and other plants on the land as their primary source of dietary requirements, and any supplementary or emergency feeding, or temporary agistment or housing for weaning, dipping, tagging or similar husbandry purposes, of the animals.</i></p> <p>The NSW Environmental Protection Authority (EPA) Contaminated Agricultural Land¹² document states that profiles of agricultural land indicate pesticide and chemical residues in soils as a result of farm management practices over a number of years. These chemicals are made up of both inorganic (such as arsenic) and organic pesticides (including DDT). The common use of arsenic was phased out in the 1950s and 1960s and the use organochlorine pesticides have been gradually decreased since the 1970s and by the late 1980s and early 1990s restricted or prohibited.</p> <p>The EPA document states that the contamination of land in NSW is mainly associated with intensive agriculture and horticulture, <i>“such as the North Coast banana plantations, the Namoi/Gwydir cotton growing areas and the Murrumbidgee Irrigation Area”</i>.</p> <p>Given that the site has for the past 15 years has not been used as a commercial farm, the likelihood of contamination is minimal.</p> <p>The EPA note that even small-cropping, local orchards and market gardens all use pesticides and other farm chemicals and have published <i>Guidelines for Assessing Former Orchards and Market Gardens (June 2005)</i>. These guidelines are considered relevant to the application at hand.</p> <p>The <i>Guidelines for Assessing Former Orchards and Market Gardens</i> identify orchards as a block up to 10 hectares containing a single variety of tree planting. It is further stated in the Guidelines that the chemicals likely to have been applied would include insecticides, fungicides, herbicides and soil fumigants.</p> <p>With the exception of the inorganic chemicals and the organochlorines, the organic compounds used in many pesticides are not persistent and decompose in the soil</p>
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¹² www.epa.nsw.gov.au/licensing-and-regulation/licensing/environment-protection-licences/authorised-officers/resources-and-training/contaminated-agricultural-land

	<p>within a year of application. In this regard, given the absence of any orchard the presence of organic compounds, in the soil, associated with the application of pesticides is likely to be low. The review in 1995 of <i>“soil sampling results from orchards and market gardens in NSW suggested that pesticide use has not resulted in significant contamination¹³”</i> and that contamination, if any, was a result of chemical spills or leaks as opposed to the application of the chemicals for their intended use.</p> <p>It is known that Griffith City Council in assessing recent development applications involving former agricultural land, Council has considered land contamination reports which provide a broad indication that there is no contamination or that any residual contamination is within the prescribed concentrations to enable residential development to be undertaken. These reports generally align with the review of soil sampling results referred to in the <i>Guidelines for Assessing Former Orchards and Market Gardens</i>.</p> <p>Notwithstanding any previous consideration of contamination at the time the land was subdivided, Council that it can be reasonably satisfied that site is suitable for the proposed development on the basis that:</p> <ul style="list-style-type: none"> ▪ From aerial imagery dating back to 1974 there is no evidence of any permanent plantings on the land. ▪ Contamination reports held by Council for former intensive plant agricultural sites within the local government area suggests that there would be no contamination or residual contamination is within accepted levels; and <p>Notwithstanding the above it is recommended that the following condition be imposed – this can be included as a restriction on the title of the land, as a means of informing future landowners of what is required should the land be developed for residential purposes.</p> <p><i>“Prior to the issue of the Subdivision Certificate, a restriction shall be included on the Section 88B instrument, to be registered on the title of proposed lots, that no dwelling house shall be erected and/or no further subdivision shall be undertaken, without a development application for such being accompanied by a Limited Stage 2 Site Investigation Report (including a soil sampling regime) assessing the lands suitability for rural residential development, under State Environmental Planning Policy (Resilience & Hazards) 2021 due to the previous use of the land for agriculture.”</i></p> <p><i>Note: Soil testing for pesticide residues shall be carried out on the site in accordance with Council's Policy. The results and report shall be submitted to council. Should the results of the soil testing be found to exceed the relevant thresholds, construction shall not commence until such time as remedial</i></p>
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¹³ NSW Dept of Environment and Conservation 'Guidelines for Assessing Former Orchards and Market Gardens' p.4
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	<p><i>work has been undertaken, and further soil testing shows that the site meets the relevant thresholds.</i></p> <p>The proposed development taking into consideration the provisions of <i>State Environmental Planning Policy (Resilience & Hazards) 2021</i> ; the <i>Contaminated Land Planning Guidelines</i>, Griffith City Council's <i>Contaminated Land Management Policy (EH-CP-203)</i> and <i>Guidelines for Assessing Former Orchards and Market Gardens</i> and it has been identified that the proposed land is likely suitable for the development.</p>
<i>Transport & Infrastructure 2021</i>	No referrals were required under this SEPP.

SECTION 4.15 (1)(a)(ii) Any Draft Environmental Planning Instruments

There are no draft environmental planning instrument relevant to this development application.

(Note: Griffith LEP 2014 Amendment No.7 came into effect on 20 October 2023 which resulted in the subject land being rezoned to R5 Large Lot Residential from RU4 Primary Production Small Holdings).

SECTION 4.15 (1)(a)(iii) any Development Control Plans

The application has been considered in terms of Griffith Residential DCP and the controls for a single dwelling. Where a numerical standard applies, the evaluation will use the term "*complies*" or "*does not comply*" and where a non-numeric guide the terms "*satisfactory*" or "*unsatisfactory*" will be used, otherwise it will be considered "*not applicable*".

TABLE 1 GRIFFITH RESIDENTIAL DEVELOPMENT CONTROL PLAN – LARGE LOT RESIDENTIAL SUBDIVISION

Control Type	Clause	Control	Compliance
Lot size and layout	4.1a	<i>The size of any lot subdivided must be in accordance with the relevant clauses in the GLEP.</i>	<p>Lot 11 (2ha) complies. Lot 12 (2ha) complies. Lot 13 (1.96ha) does not comply.</p> <p>Variation under clause 4.6 of GLEP is supported, therefore no further assessment under DCP required.</p>
	4.1b	<p><i>Proposed lots must be of a size and have a shape and dimensions to enable the siting of a dwelling and ancillary structures that:</i></p> <ul style="list-style-type: none"> <i>i. minimise impacts on adjoining lots including access to sunlight, privacy and views.</i> <i>ii. provide usable principal private open space.</i> <i>iii. provide vehicle access; and</i> <i>iv. protect or replace significant trees.</i> 	Satisfactory.
	4.1c	<p><i>Larger Lots should be provided:</i></p> <ul style="list-style-type: none"> <i>i. In the vicinity of intensive agriculture</i> <i>ii. Fronting arterial roads</i> <i>iii. Fronting railway lines</i> <i>iv. Where site conditions require larger areas for onsite detention or onsite waste disposal</i> 	Satisfactory.

Control Type	Clause	Control	Compliance
	4.1d	<i>The subdivision design should avoid using access to a public road via a right of carriage way of battle axe lot. However should an r-o-c or battle axe lot be deemed acceptable, than the right of carriage way should be 8m with a constructed driveway of 5 m wide.</i>	Satisfactory.
	4.1e	<i>Building envelopes must be established on subdivision plans for lots <1ha: Front: 7.5m Side: 5.0m Rear: 5.0m Arterial road: 20m</i>	Complies.
Roads	4.1a	<i>Road networks (street length, intersection type, stagger and spacing) should be designed to control traffic speeds to appropriate limits.</i>	Satisfactory.
	2.4b	<i>Design of roads should provide appropriate carriageway widths, street trees, lighting and adequate footpaths and cycleways: i. Footpaths and cycleways must be provided in accordance with the Griffith Pedestrian and Bicycle Strategy – 2018; and ii. Roads must be designed in accordance with Council's Engineering Standards: Subdivision and Development (as amended).</i>	Satisfactory.
	2.4c	<i>Development Applications for large lot residential subdivisions should i. Include cross sections of each type of road proposed the hierarchy including required footpaths and cycleways.</i>	Satisfactory.
Utilities & Stormwater	4.3a	<i>Large lot residential subdivisions must meet the requirements of section 3.4 for essential services and 3.5 for storm water control.</i>	Satisfactory.
	4.3b	<i>Individual onsite detention basis for lots with areas of between 3000m² and 5000m² should be avoided</i>	Not applicable.
	4.3c	<i>Not applicable</i>	Not applicable
Management Of Communal Facilities	4.4a-b	<i>Not applicable</i>	Not applicable
Battle-Axe Lots	4.5a	<i>Battle-axe lots may only be permitted where it can be demonstrated that full street frontage for all lots is not achievable due to site constraints.</i>	Not applicable
	4.5b	<i>Only two battle-axe lots can share the same access handle.</i>	Not applicable
	4.5c	<i>Battle-axe lots must meet the following requirements: i. Single access handles must have a minimum</i>	Not applicable.

Control Type	Clause	Control	Compliance
		width of 8 m and a maximum length of 50 m. ii. in calculating the area of a battle access lot the area of the access handle is to be excluded. iii. Not applicable iv. The access handle must be a sufficient width / area to accommodate the location of all services including a water meter located 1 m from any driveway and the placement of garbage and recycling bins.	
	4.5d	Battle-axe lots to facilitate a handle for the location of only a water meter are prohibited.	Not applicable
Bushfire Prone Land	4.6a-c	Not applicable	-
Contamination	4.7d	The Statement of Environmental Effects for subdivision to which this section relates should provide a history of the use of the site indicating whether there may have been any previous or current land uses that could have resulted in contamination of the site in accordance with Council's Contaminated Land Management Policy (EH_CP_203).	Satisfactory subject to conditions.
	4.7e	If there is a possibility the site could be contaminated from past uses, the development application must address the requirements of State Environmental Planning Policy No 55 (now Resilience & Hazards 2021) Contamination Planning Guidelines - Department of Urban Planning / Environment Protection Authority (as amended or replaced) and Council's Contaminated Land Management Policy (EH_CP_203).	Satisfactory
Salinity	4.8a	Not applicable	Not applicable

Based on the above Table Council may be satisfied that the proposed development satisfies the provision of the DCP.

SECTION 4.15 (1)(a) (iv) Matters prescribed by the regulation

The regulations Sections 61 (demolition), 62 (fire safety), 63 (temporary structures) and 64 (upgrade of buildings) have been considered as part of this development.

SECTION 4.15 (1)(b) the Likely impacts of the development.

Context and setting	<p>The scenic quality and features of the landscape are not negatively impacted upon by the proposed subdivision, and it is not considered that the character and amenity of the locality will be affected.</p> <p>The development will not result in any loss of views or vistas, will not impact on anyone's visual or acoustic privacy, and will not overshadow any other property.</p>
Access, transport and traffic	The proposed subdivision will create the opportunity for further dwelling being erected upon the land, and as a consequence generate additional traffic. It is considered that the future traffic

	generated by the development is unlikely to have an adverse impact on traffic in the locality.
<i>Public domain</i>	The development will not impact on public recreation or the amount, location, design, use and management of public spaces.
<i>Utilities</i>	The proposed development will require the amplification of services with each lot requiring connection to a potable water supply, natural gas, electricity and telecommunications.
<i>Heritage</i>	<p>The subject site has not been identified as containing or within the vicinity of a heritage item listed in Schedule 5 of Griffith LEP 2014.</p> <p>Consideration of the potential impacts of development on Aboriginal heritage is a key part of the environmental impact assessment process under the Environmental Planning and Assessment Act 1979 (EP&A Act).</p> <p>As part of its due diligence, a search of the Aboriginal Heritage Information Management System (AHIMS) has been undertaken and the report (854410 15 January 2024) indicates that there are no aboriginal sites recorded in or near the location¹⁴ nor have there been any aboriginal places declared.</p>
<i>Other land resources</i>	There is unlikely to be any impact on land resources such as mineral extractive resources or water supply catchments, is expected.
<i>Water</i>	Council's reticulated potable water is available.
<i>Soils</i>	The proposed development will not have a detrimental impact on soil conditions.
<i>Air and microclimate</i>	There will be minimal impact in terms of odour or dust from the finished development, with conditions to be imposed regarding impacts during the construction phase of the subdivision.
<i>Flora and fauna</i>	Nil tree removal is to occur and no impact on flora or fauna is likely.
<i>Waste</i>	The waste generated by the subdivision including excavated contaminated soils (in found) will need to be disposed of at a licensed waste management facility.
<i>Energy</i>	Not applicable.
<i>Noise and vibration</i>	It is not envisaged the development would generate offensive noise pollution or vibrations due to its nature and imposed hours of operation of the use.
<i>Natural hazards</i>	Other than very minor flooding the site subject is not prone to natural hazards such as tidal inundation, subsidence, slip, mass

¹⁴ Within 50m of the boundary of Lot 4 DP 1281086

	movement or bushfires.
<i>Technological risks</i>	There are no known technological risks to people, property or the natural environment from the activities.
<i>Safety, security and crime prevention</i>	The subdivision works would not pose any risk in terms of criminal activity, safety, or security.
<i>Social impact in the locality</i>	There are no social benefit or cost in terms of social cohesion, community structure, character, values or beliefs, social equity, socio-economic groups, or the disadvantaged, and social displacement, are expected.
<i>Economic impact in the locality</i>	The proposed development is unlikely to have an adverse economic impact in the locality.
<i>Site design and internal design</i>	The proposed site design is considered satisfactory and there are no internal changes proposed.
<i>Construction</i>	Should the application be approved conditions of consent will be placed on the development to ensure that no nuisance, soil erosion and sedimentation transport occurs, and in relation to hours of construction.
<i>Cumulative impacts</i>	Nil.
<i>The suitability of the site for the development</i>	
<i>Does the proposal fit in the locality ?</i>	The proposed development, is in keeping with the locality and there a no constraints posed by adjacent development that would restrict or otherwise prohibit the development from proceeding.
<i>Are the site attributes conducive to development ?</i>	<p>Other than very minor flooding the site subject is not prone to natural hazards such as tidal inundation, subsidence, slip, mass movement or bushfires.</p> <p>The soil characteristics are appropriate for the development, and there are no critical habitats, or threatened species, populations, ecological communities, or habitats on the site.</p> <p>The historic use of the site for <i>agriculture</i>, and suggests that the land may be contaminated, however given the absence of commercial farming activities over the past 15 years, levels are within acceptable guidelines. The proposed development application provides the opportunity to remove and dispose of contaminated soils if found. It is recommended a condition of consent be imposed to this effect.</p> <p>The subject site is zoned R5 and the permissibility of the development under Griffith Local Environmental Plan 2014 provides a broad indication that the site is suitable for the proposed development.</p> <p>Based on the assessment under this and other sections within this report it is considered that the site is suitable for the</p>

	proposed development.
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SECTION 4.15 (1) (d) any submissions made in accordance with the Act or the Regulations

The provisions of the Environmental Planning and Assessment Act 1979 the Environmental Planning and Assessment Regulation 2021 and Griffith City Council's Community Participation Plan set down consultation, concurrence, and advertising requirements for specific types of development applications and taking into consideration any submissions received in response to the notification process.

One submission was received objecting to the development application raising a number of concerns. A copy of the submission was forward to the applicant who was given the opportunity to respond.

The issues of concern, the response from the applicant and Council's position are set out in Table 2 below:

TABLE 2: SUBMISSIONS

Issues raised by objector; Response by applicant; Council Staff Assessment
<p>Issue: Right to farm</p> <p>Concerns have been raised that current and future agricultural practices may interfere with the amenity of future residential development.</p> <p><i>Applicant Response:</i> <i>The applicant contends that a 40m landscape buffer is unreasonable given the zone of the land.</i></p> <p><u>Council Staff Assessment:</u> A change in zoning boundaries will often cause interface conflicts which may be exacerbated as part of this development by virtue of increasing the residential density.</p> <p>Council generally concurs with the objector in that a 40m buffer is necessary but is prepared to accept that Murrumbidgee Irrigation canal system can be included in that calculation.</p> <p>It is recommended that a condition of consent be imposed requiring a 25m buffer zone be included.</p>
<p>Issue - Proximity to frost fans & frost fan policy</p> <ul style="list-style-type: none"> - Suggests that an acoustic report be undertaken to address the potential impacts of frost fans. <p><i>Applicant's Response:</i> <i>The applicant indicates that the land is not affected by any frost fan buffer including those approved by Council, but not yet installed and that the existing use of frost fans in the locality is intermittent.</i></p> <p><u>Council Staff's Assessment:</u> An acoustic report is not deemed necessary with this application as the site is not within 1000m of existing permanent frost control fans, either existing or under current approval. The submitter has indicated that there are frost fans in operation on an adjacent property but these are mobile fan units and not subject to development approval. Under Council's Frost Control Plan policy no provisions are relevant to this subdivision proposal in relation to acoustic treatment for the future dwellings.</p>
<p>Issue - Inadequate setbacks & buffers</p> <p><i>Applicant's Response:</i> <i>The applicant considers that the proposed setbacks and buffers are satisfactory, and no increase is</i></p>

necessary.

Council Staff's Assessment:

Council is of the view that the proposed setbacks are not entirely adequate. While it agrees that the buffer should incorporate the channel reserve, there is scope to increase the buffer within the boundary of the new lots so that a minimum of 40m can be achieved.

The buffer only needs to prevent the erection of a dwelling house or other habitable buildings within 40m of the neighbouring land (25m buffer + 15m channel reserve).

Issue - Landscaping

- Concerns have been raised that no landscaping details have been provided.

Applicant's Response:

The applicant has indicated that the need for landscaping at the time of subdivision is unwarranted and that landscaping would be something for future landowners to undertake.

Council Staff's Assessment:

Council is of the view that a detailed landscape plan is not required as part of the application.

It is considered that Council can impose a condition of consent that requires landscaping within the buffer zones be provided at the time a development application is made for a dwelling.

Issue - Land contamination

- The applicant has raised concerns that the historical use of the land may have resulted in contamination.

Applicant's Response:

The applicant considers that they have properly addressed Council's Contaminated Land Management Policy (EH-CP-208).

Council Staff's Assessment:

While Council in rezoning the land as part of the recent amendments to Griffith LEP 2014 deemed the land to be suitable for rural residential development, this does not necessary remove the potential that contamination may exist as part of previous agricultural practices.

A preliminary site investigation was undertaken, being a desktop historic review, which provided aerial photography back to 1958, illustrating that the site was primarily used for fodder cropping.

It is recommended that in order for Council to satisfy itself that the land is suitable, a limited phase 2 land contamination assessment be carried out and that remediation measures (if any) be carried out prior to the development of land for residential purposes. It is considered that this could be achieved by way of condition.

Issue: Access

- Concerns have been raised in respect to the adequacy of the access to the site and suggest that a proper service road be constructed to assist emergency services.

Applicant's Response:

The applicant contends that the proposed means of access to Boorga Road is adequate.

Council Staff's Assessment:

In approving the previous subdivision of land, Council restricted the development to a single crossing to Boorga Road. This single crossing is to be maintained, with a right-of-carriageway being extended to allow each lot to connect to the existing crossing.

The existing crossing is however to be upgraded to a bitumen seal. A condition to that effect has been imposed.

It is also recommended that the right-of-carriageway be constructed to an all-weather gravel standard (as a minimum) to facilitate access to each lot for future residents and emergency services vehicles.

Issue: Land capability assessment

An onsite effluent management system assessment is required for each.

Applicant's Response:

The applicant states that Council only requires the submission of a land capability assessment when lots are created are less than one (1) hectare in area.

Council Staff Assessment:

Council only requires the submission of a land capability report if the lots created are one (1) hectare or less.

As each lot is greater than a hectare, a land capability report is unnecessary.

Issue: Stormwater detention

Preliminary calculations should be provided to demonstrate that the proposed subdivision will not have any impact.

Applicant's Response

The applicant indicates that should Council require onsite detention, this matter could be addressed by way of condition.

Council Staff Assessment:

The subdivision itself will result in any change to how stormwater is managed.

It is recommended that a condition be imposed informing the applicant that stormwater is not to cross property boundaries without a proper easement, and that any s88B instrument inform future owners that stormwater detention will be required upon future development of land where the impervious surface areas are increased.

The public interest

The provisions of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979 provides an overarching requirement to consider the public interest. It is considered that the public interest is best served by the consistent application of the requirements of the relevant Commonwealth and State government legislation, environmental planning instruments, development control plan, Council policy, and by Council ensuring that any adverse effects on the surrounding area and the environmental are avoided.

<i>Community Participation Plan</i>	Notification required due to the clause 4.6 variation. At the time of preparing this report one submissions had been received.
<i>Section 7.12 (94A) Contributions Plan</i>	As section 94 (s7.11) contributions were not levied as part of the subdivision of land, Council is entitled to impose a condition requirement the payment of a s7.12 levy. The amount payable is being 1% of the nominated value of works, however the stated cost of works is less than \$100,000; thus no levy is required.
<i>Section 64 Developer Services Plans</i>	Section 64 contributions are payable for the two (2) additional lots created in relation to water only based on the NSW Water Directorate requirement for 1.2 equivalent tenements for lots greater than 2,000m ² .
<i>Engineering Guidelines: Subdivision and Development Standards</i>	The application has been referred to Council's Engineering Design and Approvals Manager for the imposition of conditions. Note: Connection to Council's sewer is not required. Only a single access to Boorga Road will be permitted via a shared access.
<i>Building near sewer and water assets</i>	Works greater than 5 metres from water and stormwater mains.
<i>Onsite Detention Policy</i>	The development falls outside OSD affected land.
<i>Sealing of Parking & Manoeuvring Areas</i>	Proposed driveways to be constructed of all-weather gravel.
<i>Tree Policy</i>	Tree removal is not proposed.
<i>Council-Related Development Applications</i>	This policy does not apply to development applications lodged by employees of Griffith City Council.
<i>Conduct of Councillors and Staff in Assessing and Determining Development Applications</i>	There is nothing specific in this policy regarding the assessment and determination of applications made by Council employees. It is understood that referral to an external consultant was made to remove any potential conflict of issues in the assessment process. Any determination of applications made by Council staff is subject to the delegations given to the relevant officer. It may be prudent that this matter is determined at a Council meeting.
<i>Frost Fan Policy</i>	The property is located outside location of current frost control fans and conditions related to noise are not required.

Table of Contributions Required – Water, Sewerage & Drainage

Type of contribution	Location	Amount per tenement	Number of tenements	Amount to be paid
Water supply	Griffith	\$ 8,695.00	2.4 ET	\$20,868.00
Total				\$20,868.00

On the basis that the proposed development is considered to be consistent with the aims and objectives of Griffith Local Environmental Plan 2013 and other relevant environmental planning instruments, development control plans or policies; is consistent with Land and Environment Court Planning Principles; and is not contrary to any Commonwealth or State government legislation and policies it is therefore unlikely to raise any issues that are contrary to the public interest.

PART FOUR: DETERMINATION

It is recommended that Development application 281/2023(1) be determined as **APPROVED**, subject to conditions of consent, including:

- Imposition of conditions provided by Council's Engineering Design and Approvals Manager.
- Imposition of conditions provided by Council's Environmental Health Officer.
- Payment of section 64 contributions for water.
- Stormwater from the proposed dwelling is to be directed into the existing drainage system (via existing/proposed easements
- Internal driveways to be constructed of all-weather gravel.
- Prior to the issue of the Subdivision Certificate, a restriction shall be included on the Section 88B instrument, to be registered on the title of proposed lots, that no dwelling house shall be erected and/or no further subdivision shall be undertaken, without a development application for such being accompanied by a Limited Stage 2 Site Investigation Report (including a soil sampling regime) assessing the lands suitability for rural residential development, under State Environmental Planning Policy (Resilience & Hazards) 2021 due to the previous use of the land for agriculture.

Note: Soil testing for pesticide residues shall be carried out on the site in accordance with Council's Policy. The results and report shall be submitted to council. Should the results of the soil testing be found to exceed the relevant thresholds, construction shall not commence until such time as remedial work has been undertaken, and further soil testing shows that the site meets the relevant thresholds.

Assessment Officer

Signature:

Name: Steven Parisotto
Title: Principal, PARISPLAN URP (Consultant)
Date: 15 January 2024

Peer Reviewing Officer / Delegated Officer

Signature:

Name: Kerry Rourke
Title: Acting DA Coordinator
Date: 08 March 2024