

Planning Services

IRF18/5423

Gateway Determination Report

LGA	Bathurst
PPA	Bathurst Regional Council
NAME	Housekeeping Amendment (No. 14) (0 homes, 0 jobs)
NUMBER	PP_BATHU_2018_002_00
LEP TO BE AMENDED	Bathurst Regional Local Environmental Plan 2014
ADDRESS	Whole of LGA as well as these specific locations: Edgells Lane, Kelso 21 Blacks Mill Lane, O'Connell 294 Russell Street and 10 Bishop Street, Bathurst Boundary Road, Mitchell
DESCRIPTION	Lot 2 DP1233088 Part Lot 100 DP864119 Lot 1 and 2 DP1237902 Part Lot 284 DP47960
RECEIVED	3 October 2018 and further information received on 9 January 2019
FILE NO.	IRF18/5423
POLITICAL DONATIONS	There are no known donations or gifts to disclose and a political donation disclosure is not required.
LOBBYIST CODE OF CONDUCT	There have been no known meetings or communications with registered lobbyists with respect to this proposal.

INTRODUCTION

Description of planning proposal

The planning proposal is a housekeeping style amendment as it intends to amend six different components of the Bathurst Regional Local Environmental Plan (LEP) 2014:

1. Amendments to the exempt development provisions within Schedule 2.
2. Amendments to the complying development provisions within Schedule 3.
3. Rezone Council land at Edgells Lane, Kelso from RE2 Private Recreation to part zone E2 Environmental Conservation and RU4 Small Lot Primary Production and impose a 40ha Minimum Lot Size (MLS) to part of the lot.
4. Addition of two new local heritage items and amend the boundary of one existing heritage item listed in Schedule 5.
5. Amend Clause 7.10 to enable educational establishments to erect directional signage on any land zoning.
6. Permit 'artisan food and drink industries' in the RU1 Primary Production, RU2 Rural Landscapes and RU4 Primary Production Small Lots zones.

Site description

Amendments to the exempt and complying development, and Clause 7.10 will affect all land within Bathurst LGA. Permitting 'artisan food and drink industries' will affect all rural land (besides RU3 Forestry land) in Bathurst LGA. This is primarily the land surrounding Bathurst city, except for a strip of RU4 Primary Production Small Lots along the Macquarie River, which intersects the middle of Bathurst. Details of specific locations are provided below.

Lot 2 DP1233088, Edgells Lane, Kelso

The Edgells Land subject site contains part of 'The Brick Pits' wetland and some unused land (**Figure 1a**), all of which is zoned RE2 Private Recreation (**Figure 1b**). The surrounding area is primarily RU4 Primary Production Small Lot as it is within the flood prone land of the Macquarie River. Outside of this flood zone is the residential areas of Bathurst.



Figure 1a: Aerial imagery of Edgells Lane, Kelso



Figure 1b: Land zoning of Edgells Lane, Kelso

Part lot 100 DP864119, 21 Blacks Mill Lane, O'Connell

The 21 Black Mill Lane subject site is located approximately 17km south-east of Bathurst. The subject lot contains the remnants of the well-maintained Mill Cottage built in 1826. As well as more modern residential and farm buildings (**Figure 2a**). The subject site is located on primary production land (**Figure 2b**) on the bank of Fish River.



Figure 2a: Aerial imagery of 21 Blacks Mill Lane, O'Connell.

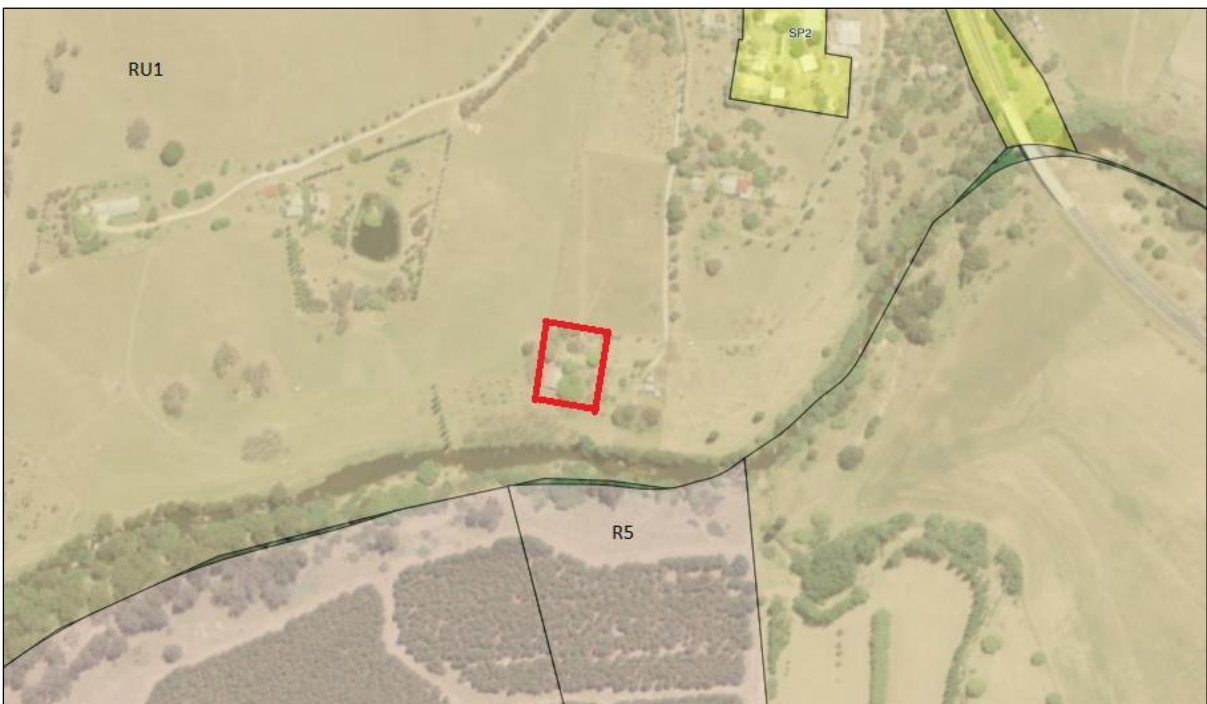


Figure 2b: Land zoning of 21 Blacks Mill Lane, O'Connell.

Lots 1 & 2 DP1237902, 294 Russell Street and 10 Bishop Street, Bathurst

The 294 Russell Street subject site consists of a large Victorian style house, named Oakstead, which is the former Presbyterian Manse (**Figure 3a**). The 10 Bishop Street subject site contains a recently built house, which was subdivided off the original Oakstead property. The subject sites are located near central Bathurst, in a residential zone (**Figure 3b**).



Figure 3a: Aerial imagery of 294 Russell Street and 10 Bishop Street, Bathurst

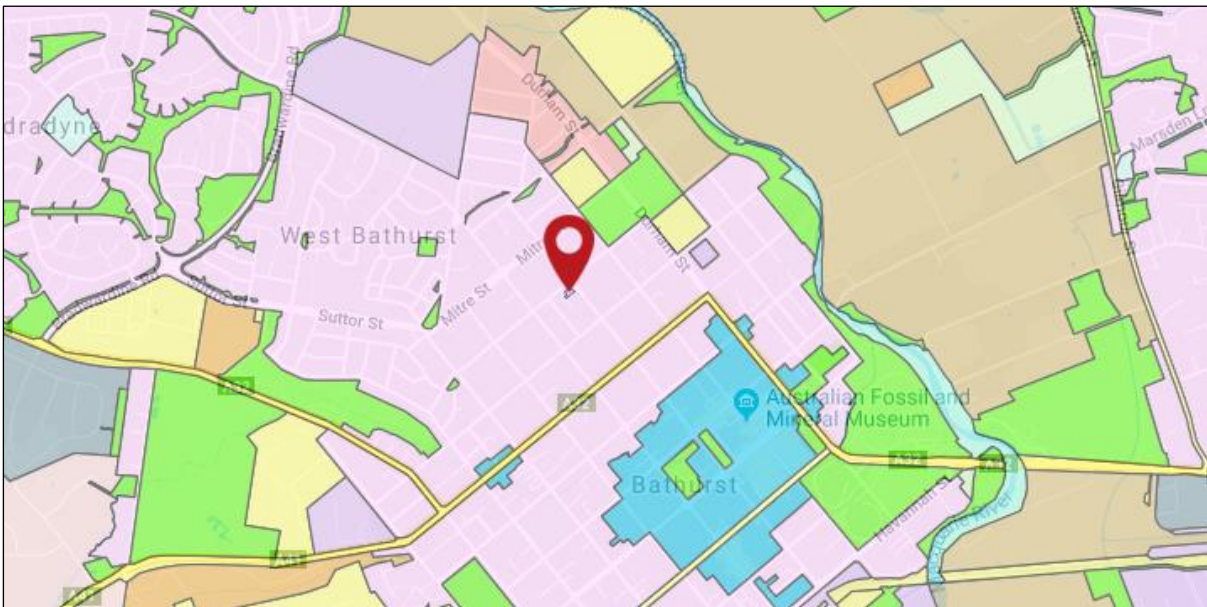


Figure 3b: Land zoning of 294 Russell Street and 10 Bishop Street, Bathurst

Part Lot 284 DP47960, Boundary Road, Robin Hill

The Boundary Road subject site is located on the south-western limits of Bathurst. It is a part of an area of protected vegetation (**Figure 4a**), which is zoned E2 Environmental Conservation (**Figure 4b**). Within the subject site is a reference tree from the Crown Plan of Survey of Portion 186, dated 1873. The subject site is bounded by Charles Sturt University to the east and large lot residential land to the west (**Figure 4b**).



Figure 4a: Aerial imagery of Boundary Road.

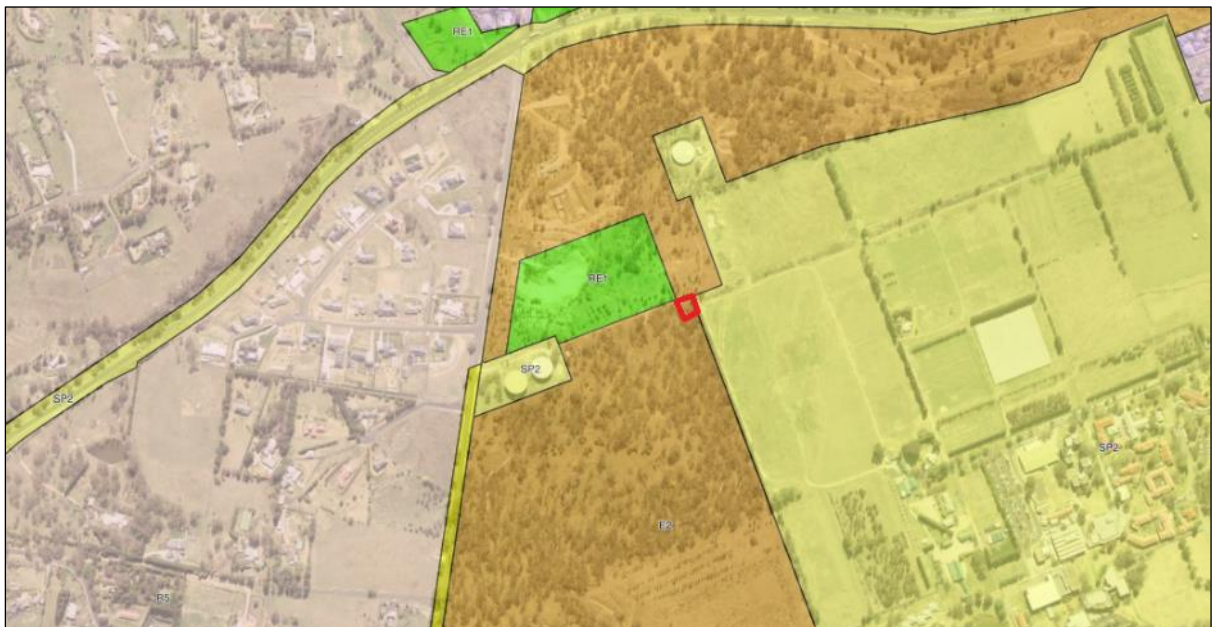


Figure 4b: Land zoning of Boundary Road.

Existing planning controls

Exempt and complying development

Most LGAs in NSW defer to the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP) to regulate exempt and complying development. Bathurst Regional Council has its own extensive local exempt and complying development provisions. While the Codes SEPP contains provisions related to Council's proposed amendments, Council has elected to use its own provisions instead as they are more specific, and tailor made for Bathurst LGA. The Codes SEPP contains provisions which allow this to occur.

Edgells Lane, Kelso rezoning

The land was recently sold to Council and is currently zoned RE2 Private Recreation. Council intend to rezone part of the lot containing 'The Brick Pits' wetland to E2 Environmental Conservation to protect the wetland by limiting its development potential. The remainder of the lot is intended to be rezoned to RU4 Primary Production Small Lot, to allow the land to be leased for agricultural purposes similar to the surrounding RU4 land.

There is currently no Minimum Lot Size (MLS) for the land. Council intend to impose a MLS of 40ha over the RU4 land, in line with adjacent RU4 land.

Additional local heritage item – Mill Cottage and reference tree

Currently the heritage items have no heritage protection under the LEP. Historic features of these items could be altered via approved development.

Amendment to local heritage item – Oakstead Manse

Currently the heritage protection provision of Oakstead manse covers all land on Lots 1 and 2, DP1237902. This is restricting development potential of Lot 2, DP1237902 which has been subdivided from the lot containing Oakstead Manse.

Clause 7.10 – Signage

Currently 'educational establishments' which are not located on main roads do not have an approval pathway under the Bathurst Regional LEP to erect signage to direct traffic to their location.

Permitting 'artisan food and drink industries' in certain rural zones

'Artisan food and drink industries' are a subset of 'light industry', which is a type of 'industry'. The RU1, RU2 and RU4 zones, prohibit 'industry' development. Therefore, 'artisan food and drink industries' would be prohibited in these rural zones.

'Light industries' are permitted with consent in the following zones of Bathurst LGA:

- RU5 Village.
- B3 Commercial Core.
- B5 Business Development.
- IN1 General Industrial.
- SP3 Tourist.

Summary of recommendation

Proceed with condition – Approval of the planning proposal is recommended as it is expected to have a beneficial impact on the local environment and community. It is consistent with local and regional planning strategies and, is expected to be consistent with all section 9.1 Directions once agency consultation is complete.

PROPOSAL

Objectives or intended outcomes and explanation of provisions

Exempt and complying development controls

Bathurst Council has certain exemptions from the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP). Council has its own exempt and complying codes listed in Schedule 2 and 3 of the Bathurst Regional LEP 2014. The intent of the proposal is to clarify existing provisions and add additional controls to these schedules. Some of these changes include:

- Introducing criteria related to the maximum harvestable rights and boundary setback requirements for dams.
- Remove local provisions relating to filming and defer to the Codes SEPP.
- Reword the paint and rendering of buildings clause so it no longer applies to draft or approved heritage items.
- Create a new clause allowing shipping containers to be exempt development under certain conditions.

Edgells Lane, Kelso Rezoning

The land was recently sold to Council and before this it was a part of the St Pats Club which was appropriately zoned RE2 Private Recreation. Council intend to rezone part of the lot to consolidate the E2 Environmental Conservation land to protect 'The Brick Pits' wetland. The remainder of the lot is not connected to other Council owned recreation land. The lot is too small to be useful for the community for recreation. Council has no short-term intentions of using the land. Council intends to rezone the land to RU4 Primary Production Small Lot, to allow the land to be leased for agricultural purposes.

Schedule 5 environmental heritage amendments

Mill Cottage and the reference tree have been assessed by Council's heritage advisor and recommended for listing as an item of local significance in Schedule 5 of the LEP. Council approved construction of a dwelling at the rear of 294 Russell Street, where the Oakstead Manse is located. Council's heritage advisor supports development of 10 Bishop Street as an existing pool and retaining wall separates Oakstead Manse and the new dwelling. As the dwelling at 10 Bishop Street is a new building with no heritage significance, amending the heritage protection boundary for Oakstead Manse is supported to exclude the new dwelling.

Clause 7.10 signage

Currently the Bathurst LEP 2014 does not permit signage for educational establishments outside of main roads. Bathurst has several educational establishments on minor roads which are unable to direct traffic to their establishment. Amending clause 7.10 to include educational establishment will permit this type of development subject to development consent.

Permitting 'artisan food and drink industries' in certain rural zones

The *Standard Instrument—Principal Local Environmental Plan* was amended in August 2018 to include multiple new land use definitions including 'artisan food and drink industry'. Councils are permitted to include 'artisan food and drink industry' as a permissible land use in additional zones via amending LEPs. Approval of this

proposal will allow 'artisan food and drink industry' development to occur in additional rural zones, which encompass most land in the Bathurst LGA. By permitting this land use in additional zones, it is anticipated for additional business and tourist ventures to emerge.

Mapping

An explanation of map changes required for this LEP amendment are provided in **Table 1** below.

Location	Map Type	Type of change
Boundary Road, Robin Hill – heritage reference tree	HER_011B	Addition of HI I344
294 Russell Street and 10 Bishop Street, Bathurst – Oakstead Manse	HER_011BA	Amend boundary of HI I64 to exclude 10 Bishop Street
21 Blacks Mill Lane, O’Connell – Mill Cottage	HER_012B	Addition of HI I343
Edgells Lane, Kelso – rezoning	LZN_011B	Amend zoning from RE2 to part zone E2 and RU4
	LZN_011F	
	LSZ_011B	Addition of 40ha MLS to part of lot with RU4 zone
	LSZ_011F	

Table 1: List of proposed map changes by location.

NEED FOR THE PLANNING PROPOSAL

The planning proposal is not a result of any strategic study or report. This housekeeping proposal is in response to minor proponent and Council driven requests which have been combined into one proposal.

Exempt and complying development controls

Council intends to alter some wording and add additional clauses to the exempt and complying development controls to clarify the intents of the provisions and refine the applicability of the criteria. The proposal allows for additional minor development which adheres to the exempt and complying controls to be permitted without development consent. The proposed wording for the exempt and complying controls have been reviewed by the Department’s Codes and Approval Pathways Policy team, which do not object to the proposed controls.

Edgells Lane, Kelso Rezoning

Council has already bought this land to protect ‘The Brick Pits’ wetland. Rezoning the land for E2 Environmental Conservation is considered the best method of protecting the wetland from future development.

Council has not provided an analysis of alternative options for the remainder of the lot. Rezoning the land to permit grazing and cropping is not required as ‘extensive agriculture’ is permitted without consent on RE2 Private Recreation land. However, maintaining the RE2 zoning is not appropriate as the lot will not be used for private recreational purposes. The zone objectives of RU4 Primary Production Small Lots is suitable to this lot as it is approximately 10ha and within the floodplains of the

Macquarie River. Therefore, rezoning of part of Lot 100 DP864119 to RU4 is considered the best method of achieving the intended outcomes of the proposal. This method will not permit a dwelling entitlement on the land.

Schedule 5 environmental heritage amendments

The land holders have approached Council to request the listing Mill Cottage and the reference tree to the local heritage register. Council's heritage advisor supports listing of these items as having local heritage significance. Amending the heritage boundary of Oakstead Manse will facilitate the development of the subdivision and Council's heritage advisor states this will not impact on the Oakstead Manse heritage item. There are no objections from Council or the Department to this proposed amendment. Consultation with OEH will be required.

Clause 7.10 signage

The planning proposal is needed as currently this development type is prohibited. No alternatives to this proposal have been assessed. Development consent is still required for this type of development once it is permitted, therefore, there are no objections to this proposal.

Permitting 'artisan food and drink industries' in certain rural zones

Council is supportive of permitting 'artisan food and drink industries' in certain rural zones as similar land uses, such as 'cellar door premises', are permissible with consent in these zones. Council are not supportive of permitting the parent term 'light industry' as this would permit further industrial development which is not conducive to agricultural uses. Permitting 'artisan food and drink industries' in certain rural zones is supported given the existing similar permitted developments and to help strengthen the food and wine tourism reputation for Bathurst.

STRATEGIC ASSESSMENT

State

There are no known state strategic planning frameworks relevant to the proposal. The proposal is to amend local planning controls only.

Regional / District

The Central West Orana Regional Plan 2036 (CWORP) is the relevant regional strategic framework for this proposal. There are no relevant actions in the CWORP for the proposed amendments to exempt and complying development, or clause 7.10 signage. The remainder of the proposal is consistent with the CWORP as outlined:

- Rezoning of 'The Brick Pits' wetland is consistent with action 13.1 to protect high environmental value assets through local environmental plans.
- Amendments to the local heritage listing is consistent with action 17.1 to prepare, review and update heritage studies in consultation with the wider community to recognise and conserve heritage assets and items, and include appropriate local planning controls.
- Permitting 'artisan food and drink industries' in certain rural zones is consistent with action 2.1, to encourage agribusiness diversification and value-added opportunities by reviewing local plans to ensure land use zoning and definitions reflect industry requirements.

Local

The proposed additions to heritage listings are consistent with objective 11.2 of the Bathurst Regional Heritage Strategy 2014-2017 and Objective 1 of the Bathurst 2040 Community Strategic Plan (CSP).

The Bathurst Biodiversity Management Plan 2012, strategy SM4 identifies 'The Brick Pits' wetland as having an opportunity to enter into a partnership with private owners on land uses which promote passive recreation and nature-based tourism. Now Council have acquired the land there should be no issues in achieving the SM4 objectives. Meeting the objectives of the Biodiversity Management Plan 2012 is also consistent with strategy 3.4 of the Bathurst CSP to protect and improve the region's biodiversity.

Permitting 'artisan food and drink industries' in certain rural zones is broadly consistent with strategy 2.4 of the Bathurst CSP to, 'support agriculture, local manufacturing, food production and education as significant contributors to the region's economy'.

The Bathurst CSP Strategy 4.6 is to plan for, assess and regulate development activity. To meet this strategy Council intends to review and develop new standards to control developments. This planning proposal will amend planning controls related to exempt and complying development, clause 7.10 (signage) and add a new permitted land use to certain rural zones. Overall this proposal is consistent with the Bathurst CSP.

The proposal does not appear to be inconsistent with the endorsed Bathurst Region Urban Strategy 2008 or Bathurst Region Rural Strategy 2013.

Section 9.1 Ministerial Directions

The planning proposal is applicable to and consistent with the following Directions:

- 1.2 Rural zones, as it will permit additional land uses within rural zones.
- 1.5 Rural lands, as it is not inconsistent with the rural planning principles (see SEPP explanation below).
- 2.1 Environment protection zones, as it will increase the environmental protection area of 'The Brick Pit' wetland.
- 2.3 Heritage conservation, as it will improve the heritage protection of certain heritage items.
- 4.3 Flood prone land, as it will rezone land within a flood prone area and be consistent with the objectives of this Direction.
- 5.10 Implementation of regional plans, as it is consistent with the CWORP.
- 6.1 Approval and referral requirements, as it affect exempt, permitted with consent and complying development, which does not require additional consents from state agencies.
- 6.3 Site specific provisions, as there are no site specific provisions.

1.3 Mining, Petroleum Production and Extractive Industries

Rezoning of Edgells Lane, Kelso will prevent mining activities from occurring on approximately 3ha of land. The RE2 zone is an open zone where mining can occur. Rezoning 'The Brick Pits' wetland to E2 will prevent mining activities from occurring on the land, which is inconsistent with Direction 1.3. Council is to consult with the

Department of Planning and Environment (DPE) – Resources and Energy to determine if this inconsistency is justified as loss of 3ha for mining is of minor significance.

State environmental planning policies (SEPPs)

SEPP (Rural Lands) 2008

The Rural Lands SEPP applies as the proposal will affect development controls related to rural land by permitting 'artisan food and drink industries' in certain rural zones. The objectives of this SEPP are to be consistent with the rural planning principles. As the proposal will not limit, reduce or conflict with existing rural activities or environmental interests, the proposal is consistent with the Rural Lands SEPP.

SEPP (Exempt and Complying Development Codes) 2008

The proposal will repeal some local exempt development controls, particularly relating to filming and ancillary structures. Upon repealing the local provisions, the development may still be considered exempt development under the provisions of the Codes SEPP. The proposal is not inconsistent with the Codes SEPP.

SITE-SPECIFIC ASSESSMENT

Social

The proposed heritage amendments have been included in this proposal at the request of the land holders. The amendments to the heritage listing have been supported by a heritage advisor. Overall the amendments to the heritage listing are expected to have a positive impact to the local community.

Amending development controls for clause 7.10, exempt and complying development, and permitting 'artisan food and drink industries' in certain rural zones should allow for additional development to occur or occur without development consent. Clarification of these development controls is also seen as a positive outcome for the community.

Protecting the remainder of 'The Brick Pits' wetland for environmental conservation and public recreation is considered to have a positive impact on the community.

Environmental

- The intent of exempt and complying development is to permit development which will have negligible impact on the environment, therefore, it is unlikely the proposal will negatively impact the environment.
- The rezoning of land at Edgells Lane, Kelso will have a positive impact on the environment as it will zone 'The Brick Pit's wetland for environmental conservation. Increasing the protection status of the wetland will have a positive impact on any threatened or migratory species which use the wetland.
- Amendments to clause 7.10 signage and heritage listing is an administrative change only and is unlikely to impact the environment.
- It is uncertain what environmental impacts will occur from permitting 'artisan food and drink industries' in certain rural zones. The environmental impact will be assessed by Council per site at the development application stage.

Economic

There are no expected negative impacts on the local economy from the proposal. Permitting 'artisan food and drink industries' in certain rural zones is expected to result in additional, value adding artisan developments which could result in a positive economic outcome from sales of goods and tourism.

CONSULTATION

Community

Council have proposed a 28 day community consultation period. This is considered an appropriate timeframe for the public to comment on the proposal given the multiple proposed changes to the LEP.

Agencies

Council have proposed to consult with the Office of Environment and Heritage - Heritage Division to inform them of the proposed changes to the local heritage provisions. In addition to this, consultation with DPE – Resources and Energy is required to fulfil the requirements of section 9.1 Direction 1.3 Mining, Petroleum Production and Extractive Industries.

TIME FRAME

Council have proposed a six-month time frame for completing the LEP by April 2019. Given the additional agency consultation period requirement for section 9.1 Direction 1.3 a 12 month timeframe to complete the LEP is recommended.

LOCAL PLAN-MAKING AUTHORITY

Council has requested to be the local plan-making authority. Council should be authorised to be the local plan-making authority as the proposal:

- Is consistent with local and regional planning strategies.
- Is consistent with relevant SEPPs.
- Does not require reclassification of Council owned land.
- Does not affect a previously deferred matter in an existing LEP.
- Is expected to be consistent with all section 9.1 Directions once agency consultation has been completed.
- Although Council is the land owner of the Edgells Lane rezoning, it is considered the reasons for the proposed changes and intended outcomes are transparent and will not cause a conflict of interest to make the plan.

CONCLUSION

Preparation of the planning proposal is supported to proceed with conditions because the proposal:

- Is consistent with local and regional planning strategies.
- Is expected to have a positive outcome on the local environment and community.
- Is expected to be consistent with all section 9.1 Directions once agency consultation has been completed.

RECOMMENDATION

It is recommended that the delegate of the Secretary note that the consistency with section 9.1 Direction (1.3 Mining, Petroleum Production and Extractive Industries) is unresolved and will require justification.

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

1. Prior to public exhibition consultation is required with Department of Planning and Environment – Resources and Energy to address the inconsistency with section 9.1 Direction 1.3 Mining, Petroleum Production and Extractive Industries.
The response from the Department of Planning and Environment – Resources and Energy is to be forwarded to the Department of Planning and Environment – Western Region office and Council is to seek approval to proceed to public exhibition.
2. Public exhibition is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:
 - (a) the planning proposal must be made publicly available for a minimum of **28 days**; and
 - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of *A guide to preparing local environmental plans* (Department of Planning and Environment 2018).
3. Consultation is required with the Office of Environment and Heritage – Heritage Division under section 3.34(2)(d) of the Act. The public authority is to be provided with a copy of the planning proposal and any relevant supporting material and given at least 21 days to comment on the proposal.
4. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
5. Prior to submission of the planning proposal under section 3.36 of the Act, the final LEP maps must be prepared and be compliant with the Department’s ‘Standard Technical Requirements for Spatial Datasets and Maps’ 2017.
6. The planning proposal authority is authorised as the local plan-making authority to exercise the functions under section 3.36(2) of the Act subject to the following:
 - (a) the planning proposal authority has satisfied all the conditions of the Gateway determination;

- (b) the planning proposal is consistent with section 9.1 Directions or the Secretary has agreed that any inconsistencies are justified; and
- (c) there are no outstanding written objections from public authorities.

7. The time frame for completing the LEP is to be **12 months** following the date of the Gateway determination.



8.2.19

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12.2.19

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