

153 Lot Residential Subdivision and associated new roads, demolition of buildings and removal of trees - 197 Limekilns Road, Kelso

JOINT REGIONAL PLANNING PANEL

(Western Region)

JRPP No	JRPP Reference Number: 2017WES006
DA Number	2017/212
Local Government Area	Bathurst Regional
Proposed Development	150 lot residential subdivision and associated new roads, demolition of buildings and removal of trees
Street Address	197 Limekilns Road, Kelso
Applicant/Owner	Bathurst Regional Council (applicant) Bathurst Regional Council (owner)
Number of Submissions	11
Recommendation	Approval with Conditions
Report by	Daniel Dwyer, Senior Development Control Planner

RECOMMENDATION AND ASSESSMENT REPORT

Development Application Information

Application No: 2017/212

Applicant: Bathurst Regional Council

Property: Lot 3, DP 833295 & Lot 5, DP 221308, 197 Limekilns Road & Marsden Lane, Kelso

Proposal: 150 lot residential subdivision and associated new roads, demolition of buildings and removal of trees

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Purpose of Report

The purpose of this report is to seek determination from the Western Joint Regional Planning Panel of the subject Development Application for a 150 lot residential subdivision and associated new roads, demolition of buildings and removal of trees at Lot 3, DP 833295 & Lot 5, DP 221308, 197 Limekilns Road & Marsden Lane, Kelso.

Recommendation

That the Western Regional Joint Regional Planning Panel grant consent to Development Application 2017/212 for:

150 LOT RESIDENTIAL SUBDIVISION AND ASSOCIATED NEW ROADS, DEMOLITION OF BUILDINGS AND REMOVAL OF TREES

Subject to conditions included in the Draft Notice of Determination (see **attachment 1**) with any further conditions or amendments as determined appropriate by the Director Environmental Planning & Building Services pursuant to Section 80 (A) of the Environmental planning and Assessment Act 1979, as amended.

Executive Summary

The proposal is for a 153 lot residential subdivision and associated new roads.

The proposed lots will comprise the following:

- 147 regular and battle-axe lots;
- 1 lot adjoining the water pump station to be retained by Council (Lot 1001)
- 1 lot containing the existing No. 17 Reservoir (Lot 1003); and
- 1 vacant residual lot (for future subdivision) (Lot 1005).

The area is zoned for residential purposes and the subdivision of the land is consistent with the provisions adopted governing its development.

The subject site was formerly an operational orchard and still contains areas of trees which operated as windbreaks and buffers associated with that use. These trees are proposed to be removed as part of the subdivision.

There is a significant amount of community concern associated with the removal of these trees. These concerns relate to the visual and amenity contribution these trees make to the locality and their habitat value.

The assessments conclude that large parts of the trees (particularly the older pines) whilst having a degree of amenity value are significantly drought affected and have been compromised by recent removal of asbestos piping.

The more recent plantings of casuarina and radiata pines planted along the boundary with the adjoining Pine View Estate, whilst having a high degree of amenity value for the

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adjoining estate, require a significant amount to be removed (80%) if they were to be retained.

Given the current lot layout, which is consistent with the development controls adopted for the site, retention of all or part of the trees remains unfeasible.

The applicant has proposed an area of embellishment around the existing water reservoir which can be enhanced with vegetation to increase biodiversity values on the site. Further opportunities exist for embellishment surrounding the water pump stations which can be incorporated into the development.

It is therefore recommended that the application be approved subject to conditions.

Proposed Development

The proposal is for a 150 lot residential subdivision and associated new roads.

A location plan is provided at **attachment 2**.

The proposed lots will comprise the following:

- 147 regular and battle-axe lots;
- 1 lot adjoining the water pump station to be retained by Council (Lot 1001)
- 1 lot containing the existing No. 17 Reservoir (Lot 1003); and
- 1 vacant residual lot (for future subdivision) (Lot 1005).

The proposed subdivision will involve construction of two new access points – one from Limekilns Road and one from Marsden Lane.

The development also proposes the demolition of buildings associated with the previous use of the site as an orchard. This includes an existing dwelling and several sheds including a large former fruit processing shed.

The proposal also involves the removal of a number of stands of trees within the footprint of the subdivision. The trees are a mixture of native and introduced species that were wind breaks associated with the former use of the site as an orchard.

The residual of the property (approximately 18.5 hectares) is identified for future residential development although the final configuration is yet to be determined.

The application has been supported by a number of specialist reports as noted below:

- *Plans of the proposed subdivision (**attachment 3**)*
- *Statement of Environmental Effects (**attachment 4**)*
- *Due Diligence (Contamination) Assessment prepared by SESL Australia (**attachment 5**)*
- *Detailed Contamination Investigations prepared by Envirowest Consulting (**attachment 6**)*

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- *Remediation Action Plan prepared by Envirowest Consulting ([attachment 7](#))*
- *Subdivision Tree Survey prepared by Agile Arbor ([attachment 8](#))*
- *Fauna Impact Assessment prepared by Ozark Environmental and Heritage Management ([attachment 9](#))*
- *Vegetation Management Plan prepared by Ozark Environmental and Heritage Management ([attachment 10](#))*

The subject land

The subject land is located between Limekilns Road and Marsden Lane in the suburb of Kelso. The subject land is comprised of two lots being Lot 3 in DP 833295 and Lot 5 in DP 221308. The total area of the subject land is 36.287.

The subject land is bounded by Marsden Lane to the north, Limekilns Road to the south, a small rural holding to the east (likewise zoned residential) and an established residential estate to the west (Pine View).

Lot 3 in DP 833295 currently contains Council's No. 17 Water Reservoir.

Lot 5 in DP 221308 currently contains a dwelling, two large sheds and a number of smaller sheds and outbuildings. The site was previously an orchard however all fruit trees have been removed.

The highest elevation of the subject site is 730 metres and the lowest 702 metres.

A Council water pump station is located in the south western corner of the site.

All external boundaries of the subject land are lined with an established tree screen buffer. Other established native and exotic trees are scattered throughout the site.

The subject land was rezoned from 1(a) Inner Rural under the Bathurst Regional (Interim) Local Environmental Plan 2005 to R1 General Residential and RE1 Public Recreation under the Bathurst Regional Local Environmental Plan 2014.

The land was rezoned prior to Council's acquisition of the site.

Legislative Requirements

(i) Joint Regional Planning Panel (JRPP)

The Joint Regional Planning Panel is the consent authority for the determination of the subject Development Application, pursuant to Schedule 4A of the Environmental Planning and Assessment Act 1979. The proposal is a Council development with a Capital Investment Value of over \$5 million.

(ii) S79C Assessment

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79C(1)(a)(i) Environmental planning instruments (State Environmental Planning Policies and Local Environmental Planning Policies)

SEPP (State and Regional Development) 2011

The proposed development is listed under schedule 4A of the Environmental Planning and Assessment Act 1979 and accordingly the Joint Regional Planning Panel is the consent authority, having functions of a consent authority under SEPP (State and Regional Development) 2011.

SEPP 55 - Remediation of Land

The site has a long history as an operational orchard and accordingly the potential exists for land contamination associated with these activities. Potential contaminating activities include fill materials, areas used for organochlorine pesticides, fuel storage areas, buildings and pipework containing asbestos etc.

Initial Due Diligence investigations undertaken in 2015 by SESL Australia identified the existence of soil impacted by lead and dieldrin and areas which contained or had the potential to contain asbestos. The lead and dieldrin levels exceeded the health investigation levels for residential use.

Envirowest Consulting were subsequently engaged to undertake further detailed contamination investigations for the site. The investigations concentrated on the 3 areas of concern being the area west of the previously removed shed where asbestos fragments were identified, a fill bank north of the packing shed where asbestos fragments were identified and north west of the packing shed where elevated lead and chemical levels were identified.

The further investigations resulted in the removal of minor levels of asbestos and no further investigation is warranted.

Envirowest were able to undertake further testing of the extent of lead and chemical contamination to define the impacted area to approximately 25 sqm.

Envirowest subsequently prepared a Remediation Action Plan for the area impacted by lead and chemical contamination. Remediation will involve excavation of the impacted area to a depth of 0.3 m and disposal of the material at a Waste Management Centre.

It is also noted that historically many of the underground irrigation pipes were constructed of asbestos containing material. These have recently been removed from the site with Clearance Certificates provided for the works.

In accordance with SEPP 55 – Remediation of Land, any necessary remediation work can be carried out as Category 2 remediation work (without development consent).

Subject to remediation, there is no impediment to the development of the land for residential purposes.

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Bathurst Regional Local Environmental Plan 2014

The following clauses of Bathurst Regional Local Environmental Plan 2014 are relevant and matters for consideration in assessment of the Development Application.

Clause 1.2 Aims of this plan

The proposal is not contrary to the relevant aims of the Plan.

Clause 1.9A Suspension of covenants, agreements and instruments

A Restriction as to User applies to the subject land (Lot 5, DP 847225) preventing orchard trees from being planted within 40 metres of the common boundary with the adjoining residential estate to the west (Pine View). Further, the Restriction as to User requires the owner of the subject land to comply with the plan of management for orchard operations within 150 metres of the common boundary with the adjoining residential estate.

The Restriction as to User was created upon the development of the adjoining Pine View Estate for residential purposes at a time when the orchard was operational. The Restriction was aimed at addressing potential conflicts between the orchard activities occurring at the time and the residential uses proposed on Pine View.

As all fruit trees associated with the previous orchard operation have since been removed, the Restriction as to User is no longer warranted. The Restriction as to User will ultimately need to be extinguished.

Land Use Table

The subject site is zoned R1 General Residential and RE1 Public Recreation.

The objectives of the zone R1 General Residential zone are as follows:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses, that provide facilities or services to meet the day to day needs of residents.*
- *To provide housing choice and affordability by enabling opportunities for medium density forms of housing in locations and at densities that complement the surrounding residential environment.*
- *To protect and conserve the historic significance and scenic quality of the urban villages of Eglinton, Raglan and Perthville.*
- *To enable commercial development that is compatible with the amenity of the area and does not prejudice the status and viability of the Bathurst central business district as the retail, commercial and administrative centre of Bathurst*

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The objectives of the RE1 Public Recreation are as follows:

- *To enable land to be used for public open space or recreational purposes.*
- *To provide a range of recreational settings and activities and compatible land uses.*
- *To protect and enhance the natural environment for recreational purposes.*
- *To protect and conserve the historical and scenic quality of Bathurst's open space areas.*
- *To provide a network of open space that encourages walking and cycling.*

The proposal is not inconsistent with the objectives of either zone.

The proposal, while not specifically defined under the Bathurst Regional Local Environmental Plan 2014, is being assessed as *residential subdivision*. Residential subdivisions are permissible with consent in the R1 General Residential zone.

Clause 4.1 Minimum subdivision lot size

The Lot Size Map for this locality identifies a subdivision minimum lot size of 550m² for regular lots. Each of the proposed regular lots has an area in excess of 550m².

Clause 4.1(3F) provides that a battle-axe lot in the R1 General Residential zone must have an area of not less than 750m² excluding the access handle. Each of the proposed battle-axe lots has an area in excess of 750m² excluding the access handles.

Clause 5.9AA Trees or vegetation not prescribed by development control plan

It is noted that Clause 5.9AA has, since the lodgement of the application, been repealed following the Government's introduction of reforms to legislation covering biodiversity.

The reforms, introduced on 25 August 2017, were accompanied by savings and transitional arrangements outlined in the Biodiversity Conservation (Savings and Transitional) Regulation 2017.

The Development Application was lodged on 29 June 2017 and is accordingly subject to the provisions as they existed at that time.

Clause 5.9AA applies to any tree or other vegetation that is not of a species or kind prescribed for the purposes of clause 5.9 by a development control plan made by the Council.

(2) The ringbarking, cutting down, topping, lopping, removal, injuring or destruction of any tree or other vegetation to which this clause applies is permitted without development consent.

Section 13.2 *Removal of trees* in the Bathurst Regional Development Control Plan 2014 provides that a permit or development consent must be obtained to ringbark, cut down, remove, or wilfully destroy any tree that is on:

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- Any land within a Heritage Conservation Area identified by Schedule 5 – Environmental Heritage of the LEP.
- Any land identified as a Heritage Item by Schedule 5 – Environmental Heritage of the LEP.

As the subject site is not within a Heritage Conservation Area identified by Schedule 5 – Environmental Heritage of the LEP and is not identified as a Heritage Item by Schedule 5 – Environmental Heritage of the LEP, the removal of all existing vegetation on the subject site can be undertaken without development consent.

Clause 6.1 Arrangements for designated State public infrastructure

The land is located within a designated urban release area and accordingly Clause 6.1 applies.

6.1 Arrangements for designated State public infrastructure

- (1) *The objective of this clause is to require satisfactory arrangements to be made for the provision of designated State public infrastructure before the subdivision of land in an urban release area to satisfy needs that arise from development on the land, but only if the land is developed intensively for urban purposes.*
- (2) *Development consent must not be granted for the subdivision of land in an urban release area if the subdivision would create a lot smaller than the minimum lot size permitted on the land immediately before the land became, or became part of, an urban release area, unless the Director-General has certified in writing to the consent authority that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure in relation to that lot.*
- (3) *Subclause (2) does not apply to:*
 - (a) *any lot identified in the certificate as a residue lot, or*
 - (b) *any lot to be created by a subdivision of land that was the subject of a previous development consent granted in accordance with this clause, or*
 - (c) *any lot that is proposed in the development application to be reserved or dedicated for public open space, public roads, public utility undertakings, educational facilities or any other public purpose, or*
 - (d) *a subdivision for the purpose only of rectifying an encroachment on any existing lot.*
- (4) *This clause does not apply to land in an urban release area if all or any part of the land is in a special contributions area (as defined by section 93C of the Act).*

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Council has received certification from the Department of Planning that satisfactory arrangements are in place for the provision of designated State public infrastructure. This Certificate is in force until 30 June 2018.

Clause 7.3 Airspace operations

While the subject site is within the Bathurst Airport environs, the proposal is for subdivision and road construction only and therefore does not include any structures that could potentially exceed the Limitation or Operations Surface.

The highest elevation of the subject site is 730 metres and the lowest 702 metres. The Limitation or Operations Surface above the subject site is between 770 metres and 779.5 metres. A minimum clearance of 49.5 metres is therefore available for future structures. Pursuant to *Clause 4.3 Height of Buildings* a maximum height limit of 9m would apply to all new buildings and therefore residential dwellings will not interfere with air space operations.

Clause 7.4 Development in areas subject to aircraft noise

Clause 7.4 applies to developments in areas that may be subject to aircraft noise.

(1) The objectives of this clause are as follows:

- (a) to prevent certain noise sensitive developments from being located near the Bathurst Airport and its flight paths,*
- (b) to assist in minimising the impact of aircraft noise from that airport and its flight paths by requiring appropriate noise attenuation measures in noise sensitive buildings,*
- (c) to ensure that land use and development in the vicinity of that airport do not hinder or have any other adverse impacts on the ongoing, safe and efficient operation of that airport.*

Clause 7.4 applies to development that:

- (a) is on land that:*
 - (i) is near the Bathurst Airport, and*
 - (ii) is in an ANEF contour of 20 or greater, and*
- (b) the consent authority considers is likely to be adversely affected by aircraft noise.*

In this particular case the development is outside the adopted 20 ANEF contour.

Notwithstanding this it is acknowledged that future dwellings may be subject to noise associated with aircraft at Bathurst Airport.

It is noted that the Council has had prepared an Airport Masterplan for the Bathurst Airport (Rehbein Airport Consulting 2013).

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The Masterplan acknowledges that properties outside of the ANEF mapping may nonetheless be subject to aircraft noise. The Masterplan provides an estimate of noise levels up to 2033 based on expected increase in operations.

6.4 N60 AND N70 CONTOURS

The ANEF system is generally recognised as being the most technically complete description of aircraft noise in use in the Australian context and the ANEF is the only metric recognised under AS2021:2000. However, it is also widely recognised that the ANEF system is not easily translated into the important factors which affect how individuals react to aircraft noise: the number of over flights and the loudness of individual events. This is due to the way the ANEF combines the effects of loudness, duration and frequency of noise events to develop a measure of the cumulative noise dose.

'Number above', or 'N', contours illustrate the average number of events per day louder than a certain sound level. In the case of the N60, this level is 60 Db(A). The single event level of 60 Db(A) is specified in Australian Standard AS2021:2000 as the indoor design sound level for normal domestic areas in dwellings and 70 Db(A) is the noise level at which conversation is disturbed within a house with the windows open.

Contours such as the N60s and N70s assist the community to better understand the impacts of aircraft noise by giving individuals the ability to interpret aircraft noise based on actual counts of aircraft with a noise profile greater than a certain level over a range of flight paths. The provision of 'Number Above' contours has been recently recommended by Department of Infrastructure, Transport, Regional Development and Local Government (previously the Department of Transport and Regional Services) in a discussion paper entitled *Guidance Material for Selecting and Providing Aircraft Noise Information*. They have also proven to be a good way to produce a 'whole of airport' picture of single event aircraft noise patterns which is easy for the general public to understand.

N70 and N60 maps for Bathurst Airport have therefore been produced based on the 2033 forecast traffic

The land is outside the area identified in the N70 contour. Part of the proposed subdivision is located within the N60 noise contour. These parts of the Estate affected would receive up to 10 "events" per day based on the predictions in the Airport noise plan. This is not however considered unsatisfactory given the zoning of the land.

Clause 7.5 Essential services

Supply of water

Council's Water Reservoir 17 is located within the subject land. Due to pressure limitations it is only able to service land below the 708m AHD contour. The land, with the exception of parts of the site along Limekilns Road, is located above the 708m AHD contour.

No. 34 Reservoir (currently under construction approximately 1.3km to the north east) will provide adequate capacity to serve the proposed development inclusive of the land above the 708m AHD contour. Until No 34 Reservoir has been commissioned only lots below the 708m contour can be serviced with existing water supply infrastructure. Subdivision

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certificates will not be issued for lots above the 708 metre contour until such time as No 34 Reservoir has been commissioned.

Supply of electricity

Preliminary investigations indicate that the proposed development can be serviced with existing and proposed electricity infrastructure.

Sewage management

A trunk sewer main extension between Limekilns Road and Bonnor Street will provide the proposed subdivision with a gravity fed sewer system.

Stormwater drainage

Stormwater from the proposed subdivision will be collected in a new piped drainage system within proposed Road 1. The piped drainage system will continue under Limekilns Road and discharge into an open drainage channel on the southern side of Limekilns Road. Interallotment drainage will be designed for a 20% AEP flood event and trunk drainage for a 1% AEP flood event in keeping with Council's adopted Engineering Guidelines.

Vehicular access

Access to the proposed subdivision will be via a new internal road network that will intersect with both Limekilns Road and Marsden Lane, both of which are existing collector roads.

Bathurst Regional Development Control Plan 2014

Chapter 2 Exhibition and Notification of Development Applications

Section 2.3.1.2 Development Applications that will not be notified in the R1 General Residential and R2 Low Density Residential zones

In accordance with Section 2.3.1.2 the subdivision of land in the R1 General Residential zone is not notified development.

Notwithstanding the absence of direct notification Council received a number of submissions regarding the development.

Chapter 3 Subdivision of land

Section 3.3.1 Electricity and telephone services

Preliminary investigations indicate that the proposed development can be serviced with existing and proposed electricity and telecommunications infrastructure. Such infrastructure will be installed underground.

Street lighting will be provided in accordance AS1158.

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Section 3.3.2 Roads

Access to the proposed subdivision will be via a new internal road network that will intersect with both Limekilns Road and Marsden Lane, both of which are existing collector roads.

Section 3.3.3 Drainage

Stormwater from the proposed subdivision will be collected in a new piped drainage system within proposed Road 1. The piped drainage system will continue under Limekilns Road and discharge into an open drainage channel on the southern side of Limekilns Road. Interallotment drainage will be designed for a 20% AEP flood event and trunk drainage for a 1% AEP flood event.

Section 3.3.4 Reticulated water and sewer

The Bathurst Regional Development Control Plan Map No. 4 *Kelso* identifies two distinct areas within the existing residentially zoned land, being the Stage 1 area (all land below 708m contour) and the Stage 2 area (all land above the 708m contour).

Land identified as Stage 1 can be serviced with reticulated water with existing water infrastructure however land identified as Stage 2 can only be serviced with reticulated water upon completion of Reservoir No. 34.

Reservoir No. 34 and associated infrastructure is currently under construction and is nearing completion. A condition will be imposed to ensure that Subdivision Certificates are not issued for any lots within Stage 2 until Reservoir No. 34 has been commissioned.

A trunk sewer main extension between Limekilns Road and Bonnor Street will provide the proposed subdivision with a gravity fed sewer system.

Section 3.3.9 Land contamination

The subject site is identified in Schedule 1 of Bathurst Regional Development Control Plan 2014 as being land requiring further contamination investigation prior to subdivision. Properties identified in Schedule 1 are where historical land uses had the potential to contaminate land. The subject site was previously used as an orchard and therefore has been identified in Schedule 1.

A Detailed Contamination Investigation and Remediation Action Plan have been submitted with the application.

Section 3.4.2 Allotment dimensions

The DCP prescribes a minimum frontage width of 16.5 metres for regular lots and a minimum access handle width of 3 metres for battle-axe lots.

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With the exception of those lots around the cul-de-sac head, each of the proposed regular lots has a frontage width of at least 16.5 metres. Each of the proposed battle-axe lots has an access handle width of at least 4 metres.

Section 3.4.3 Road works

Road Number 1 will be constructed as a Collector roadway in accordance with Council's Guidelines for Engineering Works.

Road Numbers 2 to 7 will be constructed as Local Access roadways in accordance with Council's Guidelines for Engineering Works.

Intersection treatments will be required where Road Number 1 meets the two major collector roads being Limekilns Road to the south and Marsden Lane to the north.

Chapter 9 Environmental Considerations

Section 9.8 Flora and fauna surveys

An Arborists Report has been prepared by Agile Arbor in order to identify the species, condition and amenity value of the trees proposed to be removed from the site. Note that the assessment is limited to the trees on site impacted by this development only and does not extend to the remainder of the site.

A summary of the findings of the Arborists report is provided in the table below (reference to Groups are those identified in the Report)

Group	Species	Approx age/height	Condition	Amenity Value
Group 1 – mature radiata pines planted as windbreaks	Pinus radiata	Approx 60 years old Average height of 25 metres	Decline from drought stress throughout the windrows of approximately 20%. Excavation to remove asbestos pipes within the Structural Root Zone (SRZ) within areas A, B and C. Root loss has the potential to destabilise the trees in strong and wet	Medium to high as they are visible from the southern town boundary

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			<p>conditions</p> <p>Red zone C has 3 large Pinus radiata trees that have potential to fail from the root plate and reach the residential boundary.</p> <p>No evidence of cavities or hollows</p>	
Group 2 – screen planting along boundary of Pine View	Pinus radiata and Casuarina cunninghamiana	<p>8 – 12 metres</p> <p>Planted in 3 parallel rows</p>	<p>Trees are young and vigorous</p> <p>Overplanted and would need thinning by 80% in order to be retained</p>	<p>Low for Casuarina</p> <p>Medium to high for Pinus</p>
Group 3 – homestead trees	Cupressa, Cedrus and Fraxinus	Approx 10 metres	Conifers have suffered drought stress	Low
Group 4 – Roadside trees along Limekilns Road	Eucalyptus nicholii and Casuarina cunninghamiana	Approx 18 metres	<p>Nicholii have evidence of recent storm damage and are in poor condition</p> <p>Casuarina in fair condition</p>	Low to medium
Group 5 – Water tank screening trees	Pinus radiata Eucalyptus goniacalyx	Approx 12 metres		Medium to high

The Arborist report does not note the existence of any threatened species on site.

A separate Fauna Impact Assessment has been prepared by Ozark to address the impact of the removal of the majority of the existing vegetation on the site.

Surveys included inspection of watercourses, dams etc, mature trees for the existence of hollows, vegetated and manmade areas with focus upon areas providing potential habitat for microbats or basking areas for reptiles.

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It is noted that construction activities occurring on site may have reduced the presence and abundance of fauna species identified during fieldwork however assessment has been based on species that may inhabit the area.

Disturbed, exotic open grassland is a main feature of the site. The grassland favours common generalist species that are capable of utilising open ground for foraging but are reliant on nearby native woodland communities for roosting and nesting.

The investigation did not identify any large hollow bearing trees present on the site. This precludes the site from being potential habitat for possums, owls and hollow dependent parrots.

The large trees provide perching, foraging and refuge habitat for birds however no nests were observed.

Manmade structures provide potential habitat for microbats and reptiles.

Overall 12 native species were recorded on site, all of which were birds.

Recorded fauna species list Scientific Name	Common Name	Status
<i>Acanthiza chrysorrhoa</i>	Yellow-rumped Thornbill	Protected
<i>Anthochaera carunculata</i>	Red Wattlebird	Protected
<i>Chenonetta jubata</i>	Australian Wood Duck	Protected
<i>Corcorax melanorhamphos</i>	White-winged Chough	Protected
<i>Corvus mellori</i>	Little Raven	Protected
<i>Cracticus tibicen</i>	Australian Magpie	Protected
<i>Grallina cyanoleuca</i>	Magpie-lark	Protected
<i>Malurus cyaneus</i>	Superb Fairy-wren	Protected
<i>Ocyphaps lophotes</i>	Crested Pigeon	Protected
<i>Platycercus eximius</i>	Eastern Rosella	Protected
<i>Rhipidura leucophrys</i>	Willie Wagtail	Protected
<i>Strepera graculina</i>	Pied Currawong	Protected
<i>Sturnus vulgaris</i>	Common Starling	Introduced

A review of habitat requirements and prior records for each listed species, populations and ecological communities predicted to occur in the study area concluded eight threatened fauna have potential to be impacted by the proposal.

Type	Scientific Name	Common Name	TSC Act	Records in 10km
Bats	<i>Falsistrellus tasmaniensis</i>	Eastern False Pipistrelle	Vulnerable	No
Bats	<i>Miniopterus schreibersii oceanensis</i>	Eastern Bentwing-bat	Vulnerable	Yes
Bats	<i>Saccolaimus flaviventris</i>	Yellow-bellied Sheath-tail-bat	Vulnerable	No
Birds	<i>Circus</i>	Spotted Harrier	Vulnerable	Yes

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Birds	<i>assimilis</i> <i>Falco subniger</i>	Black Falcon	Vulnerable	Yes
Birds	<i>Hieraaetus</i> <i>morphnoides</i>	Little Eagle	Vulnerable	No
Birds	<i>Lophoictinia</i> <i>isura</i>	Square-tailed Kite	Vulnerable	No
Birds	<i>Stagonopleura</i> <i>guttata</i>	Diamond Firetail	Vulnerable	Yes

It is noted that one public submission suggests that Red Tail Black Cockatoo have been known to inhabit the trees. Certain species of Red Tailed Black Cockatoo are listed as vulnerable under TSC Act. A search of Bionet indicates no records of these species occurring the Bathurst LGA or in the Central Tablelands area.

Application of the “7 Part test” under Section 5A of the EP&A Act (since repealed) concludes that “a *Species Impact Statement* is not required, because:

1. *In the case of a threatened species, the proposal is not likely to have an adverse effect on the life cycle of the species such that a viable local population of the species is likely to be placed at risk of extinction.*
2. *In the case of an endangered population, the proposal is not likely to have an adverse effect on the life cycle of the species that constitutes the endangered population such that a viable local population of the species is likely to be placed at risk of extinction.*
3. *In the case of an endangered ecological community or critically endangered ecological community:*
 - i. *The proposal is not likely to have an adverse effect on the extent of the ecological community such that its local occurrence is likely to be placed at risk of extinction, or*
 - ii. *The proposal is not likely to substantially and adversely modify the composition of the ecological community such that its local occurrence is likely to be placed at risk of extinction.*
4. *In relation to the habitat of a threatened species, population or ecological community:*
 - i. *The extent to which habitat is likely to be removed or modified as a result of the proposal is not significant, and*
 - ii. *That an area of habitat is not likely to become fragmented or isolated from other areas of habitat as a result of the proposal, and*
 - iii. *The importance of the habitat to be removed, modified, fragmented or isolated to the long-term survival of the species, population or ecological community in the locality is not significant.*
5. *That the proposal is not likely to have an adverse effect on critical habitat (either directly or indirectly).*
6. *That the proposal is not consistent with the objectives or actions of a recovery plan or threat abatement plan.*
7. *That the proposal constitutes or is part of a key threatening process or is likely to result in the operation of, or increase the impact of, a key threatening process”*

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The Assessment has also included a series of recommendations following the principles of 'avoid, minimise, mitigate' to reduce the impact of the proposal on local biodiversity values as follows.

Avoid impact

The following avoidance mitigation measures have been recommended:

- ☐ *Clearing of the existing homestead and associated farm structures should only occur in autumn or winter to avoid impacting on threatened microbat breeding season.*

Minimise impact

The following minimisation mitigation measures have been recommended for the 3ha of land around the water reservoir not be cleared:

- ☐ *Avoid storing equipment and machinery in the area not to be cleared.*
- ☐ *Avoiding unnecessary traffic across land not be cleared.*

Mitigate impact

The following mitigation measures have been suggested:

- ☐ *Any change in design outside the assessed impact footprint within the study area will require further assessment.*
- ☐ *Inductions would inform personnel that any unapproved impact to threatened species has legislative consequences; whether the impact was deliberate or accidental. Evidence of all personnel receiving an induction would be kept on file (signed induction sheets etc.).*
- ☐ *Parts of native trees from tree felling can be placed in areas of native vegetation to be retained. This will provide habitat complexity in the form of fallen timber.*
- ☐ *All food scraps and rubbish are to be appropriately disposed of in sealed receptacles to prevent providing foraging habitat for foxes, rats, dogs and cats.*

Bat Habitat Removal Procedure

- ☐ *Before the start of structure removal, check for evidence of current bat occupation. Evidence includes guano, stains, chatter / calls. Dark holes and crevices can be searched with a torch. Check Fairy Martin/ Swallow nests prior to removal for bats.*
- ☐ *If bats are present or disturbed during work, immediately stop work in that area for 30 minutes to allow bats time to warm up and fly out in response to the disturbance.*
- ☐ *After 30 minutes, check the area for presence of bats. If bats are still present, contact OzArk for advice on how to proceed including options for bat removal, exclusion, relocation and deterrence from the immediate work area.*
- ☐ *Work may only require deferral until the following day to allow bats to depart at dusk for evening fly out. After bats leave, installation of exclusion structures (e.g. flyscreen or plastic over hollow entrances etc.) can occur within the immediate work areas.*

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- *If bats are unexpectedly injured during work, contact a local wildlife carer group for collection of the injured bat/s. Workers are not to handle bats unless appropriately vaccinated and have the correct PPE.*

The applicant has also submitted a Vegetation Management Plan to cover the area surrounding the existing reservoir on site. The objectives of the VMP are to:

- *Recreate an area of native vegetation that is representative of local plant communities and provides habitat for native fauna, including highly-mobile and threatened species such as the threatened Regent Honeyeater (*Anthochaera phrygia*) and Swift Parrot (*Lathamus discolor*), other honeyeaters, lorikeets and arboreal marsupials.*
- *Ensure the native plantings and design of the open space is practical and enhances passive recreational opportunities for local residents.*

The open space area surrounding the reservoir consists of an area of approximately 1.5 hectares

Species have been chosen to reflect Plant Community Types known to occur within a 10km radius of the site including Brittle Gum – Broad-leaved Peppermint – Red Stringybark open forest and Blakely's Red Gum – Yellow Box grassy woodland. These species will comprise a diversity of locally occurring species that are not currently present on the site. The result is expected to encourage a greater diversity of woodland birds and other species to visit the site and ideally some potential threatened species.

Plantings will cover an area of 1.5ha, arranged in clumps interspersed with grassed areas to facilitate maintenance and use of the site as a public open space.

The table below shows specific plants to be planted at each of the seven garden bed proposed. Overall the 0.18ha replanting area will contain the following number of tube-stock plants:

- At least 14 upper-stratum plants.
- An additional three Yellow Box (*Eucalyptus melliodora*) to be planted outside of the seven garden beds to provide connectivity between garden beds.
- At least 500 mid-stratum plants.
- At least 600 ground stratum plants.

In addition to this, at least 40 Drooping Sheoak (*Allocasuarina verticillata*) will be planted around the water reservoir with a narrow mulched garden bed. Within the mulched area the following ground stratum species will be planted around the Drooping Sheoak (*Allocasuarina verticillata*):

- 75- Many flowered mat-rush (*Lomandra multiflora*).
- 75 - Blue Flax Lily (*Dianella revoluta*).

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Table 3.2

Number of tube-stock plants required per species for each garden bed	Upper Stratum	Mid stratum	Ground stratum
Garden Bed 1	<ul style="list-style-type: none"> ○ 2 -Yellow Box (<i>Eucalyptus melliodora</i>) ○ 2 - Brittle gum (<i>Eucalyptus mannifera</i>) 	<ul style="list-style-type: none"> ○ 15 - Native blackthorn (<i>Bursaria spinosa</i> subsp. <i>lasiophylla</i>) ○ 20 - Spider flower (<i>Grevillea arenaria</i>) ○ 20 - Silver banksia (<i>Banksia marginata</i>) ○ 5 - Silver Wattle (<i>Acacia dealbata</i>) ○ 20- Egg and Bacon Pea (<i>Dillwynia sericea</i>) 	<ul style="list-style-type: none"> ○ 33 - Spiny-headed mat-rush (<i>Lomandra longifolia</i>) ○ 33 - Flax lily (<i>Dianella revoluta</i>) ○ 30 - False Sarsaparilla (<i>Hardenbergia violacea</i>)
Garden Bed 2	<ul style="list-style-type: none"> ○ 2 – Brittle gum (<i>Eucalyptus mannifera</i>) ○ 2- Yellow Box (<i>Eucalyptus melliodora</i>) 	<ul style="list-style-type: none"> ○ 15- Native blackthorn (<i>Bursaria spinosa</i> subsp. <i>lasiophylla</i>) ○ 15- Spider flower (<i>Grevillea arenaria</i>) ○ 15 - Silver banksia (<i>Banksia marginata</i>) ○ 5 - Silver Wattle (<i>Acacia dealbata</i>) ○ 15 - Daphne Heath 	<ul style="list-style-type: none"> ○ 29 - Many flowered mat-rush (<i>Lomandra multiflora</i>) ○ 29 - Blue Flax Lily (<i>Dianella revoluta</i>) ○ 20 - Kangaroo Grass (<i>Themeda triandra</i>)

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		(<i>Brachyloma daphnoides</i>)	
Garden Bed 3	<ul style="list-style-type: none"> ○ 2 - Apple Box (<i>Eucalyptus bridgesiana</i>) ○ 1 - Yellow Box (<i>Eucalyptus melliodora</i>) 	<ul style="list-style-type: none"> ○ 10 - Native blackthorn (<i>Bursaria spinosa</i> subsp. <i>lasiophylla</i>) ○ 15 - Spider flower (<i>Grevillea arenaria</i>) ○ 15 - Silver banksia (<i>Banksia marginata</i>) ○ 3 - Silver Wattle (<i>Acacia dealbata</i>) ○ 12 - Heathy Bush Pea (<i>Pultenaea procumbens</i>) 	<ul style="list-style-type: none"> ○ 24 - Spiny-headed mat-rush (<i>Lomandra longifolia</i>) ○ 24 - Flax lily (<i>Dianella revoluta</i>) ○ 20 - False Sarsaparilla (<i>Hardenbergia violacea</i>)
Garden Bed 4	<ul style="list-style-type: none"> ○ 1 - Apple Box (<i>Eucalyptus bridgesiana</i>) ○ 1 - Yellow Box (<i>Eucalyptus melliodora</i>) 	<ul style="list-style-type: none"> ○ 10 - Native blackthorn (<i>Bursaria spinosa</i> subsp. <i>lasiophylla</i>) ○ 10 - Spider flower (<i>Grevillea arenaria</i>) ○ 10 - Silver banksia (<i>Banksia marginata</i>) ○ 5 - Native Fuchsia (<i>Correa reflexa</i>) 	<ul style="list-style-type: none"> ○ 16 - Many flowered mat-rush (<i>Lomandra multiflora</i>) ○ 16 - Blue Flax Lily (<i>Dianella revoluta</i>) ○ 10 - Kangaroo Grass (<i>Themeda triandra</i>)
Garden Bed 5	<ul style="list-style-type: none"> ○ None 	<ul style="list-style-type: none"> ○ 15- Native blackthorn (<i>Bursaria</i>) 	<ul style="list-style-type: none"> ○ 33 - Spiny-headed mat-rush

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		<ul style="list-style-type: none"> <i>spinosa</i> <i>subsp. lasiophylla</i>) ○ 20 - Spider flower (<i>Grevillea arenaria</i>) ○ 20 - Silver banksia (<i>Banksia marginata</i>) ○ 10 - Austral indigo (<i>Indigofera australis</i>) ○ 15 - Native Fuchsia (<i>Correa reflexa</i>) 	<ul style="list-style-type: none"> (<i>Lomandra longifolia</i>) ○ 33 - Flax lily (<i>Dianella revoluta</i>) ○ 30 - False Sarsaparilla (<i>Hardenbergia violacea</i>)
Garden Bed 6	<ul style="list-style-type: none"> ○ None 	<ul style="list-style-type: none"> ○ 15 - Native blackthorn (<i>Bursaria spinosa subsp. lasiophylla</i>) ○ 20 - Spider flower (<i>Grevillea arenaria</i>) ○ 20 - Silver banksia (<i>Banksia marginata</i>) ○ 10 - Austral indigo (<i>Indigofera australis</i>) ○ 10 - Native Fuchsia (<i>Correa reflexa</i>) 	<ul style="list-style-type: none"> ○ 35 - Many flowered mat-rush (<i>Lomandra multiflora</i>) ○ 35 - Blue Flax Lily (<i>Dianella revoluta</i>) ○ 20 - Kangaroo Grass (<i>Themeda triandra</i>)
Garden Bed 7	<ul style="list-style-type: none"> ○ None 	<ul style="list-style-type: none"> ○ 20 - Native blackthorn (<i>Bursaria spinosa subsp. lasiophylla</i>) 	<ul style="list-style-type: none"> ○ 46 -Spiny-headed mat-rush (<i>Lomandra longifolia</i>) ○ 46 -Flax lily

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		<ul style="list-style-type: none"> ○ 25 - Spider flower (<i>Grevillea arenaria</i>) ○ 25 - Silver banksia (<i>Banksia marginata</i>) ○ 20 - Austral indigo (<i>Indigofera australis</i>) ○ 20 - Heathy Bush Pea (<i>Pultenaea procumbens</i>) 	<ul style="list-style-type: none"> ○ (Dianella revoluta) ○ 40 - False Sarsaparilla (<i>Hardenbergia violacea</i>)
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Fauna habitat types can be increased at the proposed Sunnybright Estate Open Space by:

- **Installing nest boxes:** This will provide artificial hollows for roosting which is not currently present at the proposed Sunnybright Estate Open Space. Both bird and microbat nest boxes are recommended to be installed on mature trees. If nest boxes are installed, ensure the entrance contains a short spout of a hollowed tree to provide a natural looking entrance to the nest box. This design may encourage native fauna to inhabit the nest box over exotic species.
- **Staging planting of trees:** If possible, a range of different ages of tree tubestock could be planted. This would provide a diversity of age groups of trees, which is required for some fauna to inhabit an area.
- **Increase available habitat:** Additional Open Space areas will be established in Stage 2 of the Sunnybright Estate development. An opportunity for habitat connectivity may be possible along the established windrow planting to be retained along the eastern boundary of the subdivision site. This would value-add to the current proposal and provide additional habitat benefits by providing a safe path for the movement of fauna. These corridors are recommended to be set aside for the long-term and could be enhanced with further native species plantings in the future.

The historic conversion of agricultural and horticultural areas on the urban fringe of Kelso has seen the gradual removal of the established windbreaks and fruit trees from the locality. Historic photos of the locality indicate the existence of similar wind breaks on what is now Pine View Estate with established Pine windbreaks established on the western boundary of Pine View (ie adjoining Roxburgh Estate). These were removed to make way for residential development of Pine View in the same way as the current proposal.

The potential for survival and retention of the windbreaks is limited due to the long term decline from drought conditions and the impact of excavation around the root areas to

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remove asbestos pipes. Likewise the long term survival of the more recent wind breaks adjoining Pine View Estate requires the removal of 80% of trees due to overcrowding.

Whilst it is acknowledged that there will be losses of amenity value associated with removal of trees this is consistent with the foreshadowed development of the land for residential purposes.

It is however noted that there are additional mitigation options available that would assist including:

- Tree removal be limited to those areas identified and assessed in the Agile Arbor and Ozark reports
- Tree removal be limited to those reasonably required for each stage of the development
- Opportunity for further enhancement embellishment of Lot 1001 (approx. 0.965ha)

These aspects can be incorporated into conditions of the consent.

S79(c)(1)(b)Environmental (natural and built), social and economic impacts

Scenic quality

The impact as result of tree removal is discussed above.

Traffic Generation

Access to the proposed subdivision will be via a new internal road network that will intersect with both Limekilns Road and Marsden Lane, both of which are existing collector roads.

It is anticipated that the unformed sections of Limekilns Road and Marsden Lane will be upgraded (i.e. kerb and gutter) as part of this application.

In 2014 Council engaged Aurecon to prepare the Kelso Traffic Access Study. The Study investigated the traffic impacts associated with the development of the new release areas in Kelso inclusive of the subject land.

The Traffic Study identified a number of works within the vicinity of the project inclusive of new roundabouts at the intersection of Marsden Lane and Hughes Street, and 2 new roundabouts at the intersection of Marsden Lane and the new collector roads through the property and a new roundabout on Limekilns Road.

Further off site works include upgrades to the intersection of Marsden Lane and Hereford Street and widening of Hereford Street.

To facilitate these works Council has prepared and adopted *Section 94 Roadworks – New Residential Subdivisions*. The Section 94 Plan includes the construction of roundabouts

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identified in the Traffic Study. Financial contributions pursuant to the Section 94 Plan will be required as part of the application.

Heritage

Aboriginal Heritage

In 2016 Council engaged Archaeological and Heritage Management Solutions (now known as Extent) to undertake an Aboriginal Cultural Heritage Assessment of the East Kelso Residential Expansion Area.

The Assessment included investigations of the broader Kelso residential area inclusive of the subject land.

Extent undertook foot surveys of the land in conjunction with members of Council, the Local Aboriginal Land Council and the Wiradjuri Traditional Owners Central West Aboriginal Corporation.

No aboriginal sites, objects or places were identified within the Study area or on the subject land. The survey also identified the absence of any Aboriginal cultural carving or scarring on trees across the survey area.

European Heritage

There are no Local, State or National heritage items within the vicinity of the subject site.

The proposal is therefore unlikely to have a significant impact on European heritage items.

Economic Impacts

The proposed development is unlikely to have any significant adverse economic impacts and will contribute to the supply of land ready for residential development.

S79C(1)(c) Suitability of the site

The subject site directly adjoins established and developing residential estates. The subject site can be serviced with water, sewer, stormwater, electricity and telecommunications services. The subject site has direct access to two major collector roads.

S79C(1)(d) Submissions


In accordance with Section 2.3.1.2 of the Bathurst Regional Development Control Plan 2014 the subdivision of land in the R1 General Residential zone is not notified development.

Despite not being notified development, Council has received 10 submissions and 1 petition in relation to the proposed development. The following table summarises the submissions received.

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Name	Concerns
[REDACTED] [REDACTED]	<ul style="list-style-type: none"> • Tree removal. Potential for retention of some trees. • Expectation that Stage 1 land would be completely developed before Stage 2. • Public notification of proposed rezoning of subject land prior to LEP 2014.
[REDACTED] [REDACTED]	<ul style="list-style-type: none"> • Public notification of proposed rezoning of subject land prior to LEP 2014. • Removal of trees and subsequent impact on native fauna. • Lack of green space in surrounding area.
[REDACTED] [REDACTED]	<ul style="list-style-type: none"> • Removal of trees and subsequent impact on native fauna, views and overall landscape. • Loss of windbreaks and shade.
[REDACTED]	<ul style="list-style-type: none"> • Acknowledged that further information is to be submitted and foreshadowed further submissions
[REDACTED] [REDACTED]	<ul style="list-style-type: none"> • Removal of trees and subsequent loss of amenity. • Loss of bird habitat. • Existing trees visible from Bathurst itself and create pleasant backdrop. • Inconsistency with overall LEP Aims and specific zone Objectives. • Order of development of Stage 1 and Stage 2 areas identified in the DCP. • Loss of property values.
[REDACTED]	<ul style="list-style-type: none"> • Arborist report identifies high to medium amenity value of existing trees. • Redesign would enable existing healthy trees to be retained.
[REDACTED]	<ul style="list-style-type: none"> • Lack of public notification of proposed development. • Proximity of site to Bathurst airport and potential aircraft noise impact on proposed residential development. • Fauna assessment undertaken when work was being undertaken on site with heavy machinery therefore not an accurate representation.
[REDACTED]	<ul style="list-style-type: none"> • Enclosing further attachment to previous submission
[REDACTED]	<ul style="list-style-type: none"> • Inconsistency with overall LEP Aims and specific zone Objectives. • Removal of trees and subsequent loss of amenity.
[REDACTED]	<ul style="list-style-type: none"> • Removal of vegetation and loss of habitat value. • Urge incorporation of trees into green spaces
[REDACTED]	<ul style="list-style-type: none"> • Providing response given to Western Advocate

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	<ul style="list-style-type: none">• Acknowledge receipt of additional reports• Provide additional species identified on site• Potential for Red Tailed Black Cockatoos to inhabit the site• Offset only provides limited replacement value and will take time to establish
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S79C(1)(e) *Public interest.*

The proposal is for the subdivision of land for residential purposes consistent with its zoning. The development as proposed is consistent with the development controls adopted for the land.

Referrals

Internal Referrals

The proposed development was referred internally within Council to the following Officers:

- Development Assessment Engineer;
- Environmental Officer; and
- Development Assessment Planner.

Conditions have been recommended by the above Council Officers, which have been included within the Draft Notice of Determination **attached** in Appendix 1.

CONCLUSION

The development proposes the subdivision of residentially zoned land to enable its development. The development is consistent with the adopted planning controls governing the development of the land.

It is considered that the development warrants conditional development consent.