

CM13.1. Development Application 10.2021.38281.1 Forty-three (43) Lot Torrens Title Subdivision & Tree Removal - 186 Kaitlers Road & Birubi Road Springdale Heights

DATE	28 September 2021	FIL REFERENCE	AF21/01253
CONFIDENTIAL	No		
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Summary

This report is presented for Council's determination of Development Application 10.2021.38281.1 for a forty-three (43) lot torrens freehold title residential subdivision of Lot 2 in DP806427 addressed as 186 Kaitlers Road, Springdale Heights. It is, however, noted that the property also fronts, and primary access is proposed from, Birubi Road. Access to Kaitlers Road is limited to a battle-axe handle, proposed for pedestrian, bicycle and emergency access only. The Development Application was lodged as Integrated Development on 16 March 2021 and publicly notified between 24 March 2021 and 7 May 2021. During this period Council received 17 submissions, including a petition signed by 39 individuals.

As Integrated Development, the application is also seeking Bush Fire Authority from NSW Rural Fire Service pursuant to Section 100B of the Rural Fires Act 1997. General Terms of Approval were issued on 10 June 2021.

Council requested further information on 13 May 2021, in order to fully assess the application. The further information requested included a comprehensive tree report including trees along Birubi Road, and a Traffic Impact Assessment. Both reports were submitted on 18 June 2021. A second request for further information was made on 15 July 2021 in response to the updated tree report received. This was due to the proposed works resulting in the potential removal of five significant trees within the area of Birubi Road adjacent to 48 Buronga Drive. Information clarifying the applicant's position and preparedness to avoid tree removal as far as possible and willingness to accept Conditions of Consent to this effect was received on 16 July 2021. A third request for further information/amendment of the plans was made when, on 10 August 2021, Council was informed that Essential Energy had safety concerns with the development. The applicant subsequently provided an amended plan proposing the Essential Energy line to go underground along the electricity and water easements. Essential Energy provided their written support for this solution on 10 September 2021. However, on 22 September 2021 the applicant revised the plan, moving the electricity line above ground again but within an easement on a separate lot (balance lot). Essential Energy's response remains valid as they required that, as part of the subdivision, an easement is created for any existing electrical infrastructure. This amendment also added two additional residential lots, changing the total from forty-one (41) to forty-three (43). This amendment is considered minor, with insignificant impact on the information and supporting documentation provided.

The report recommends approval of Development Application 10.2021.38281.1 for a forty-three (43) lot torrens freehold title subdivision of Lot 2 in DP806427 addressed as 186 Kaitlers Road, Springdale Heights, subject to conditions.

People

Habitat Planning on behalf of Albury Land Developments.

Development Description

The proposal seeks approval for a forty-three (43) lot residential subdivision and associated works including tree removal. The proposal, as amended, is shown in the amended subdivision plans (included in attachment 1) and as described in the Statement of Environmental Effects (included as attachment 2). An extract of the subdivision plan (as amended) is included in Figure 1 below.

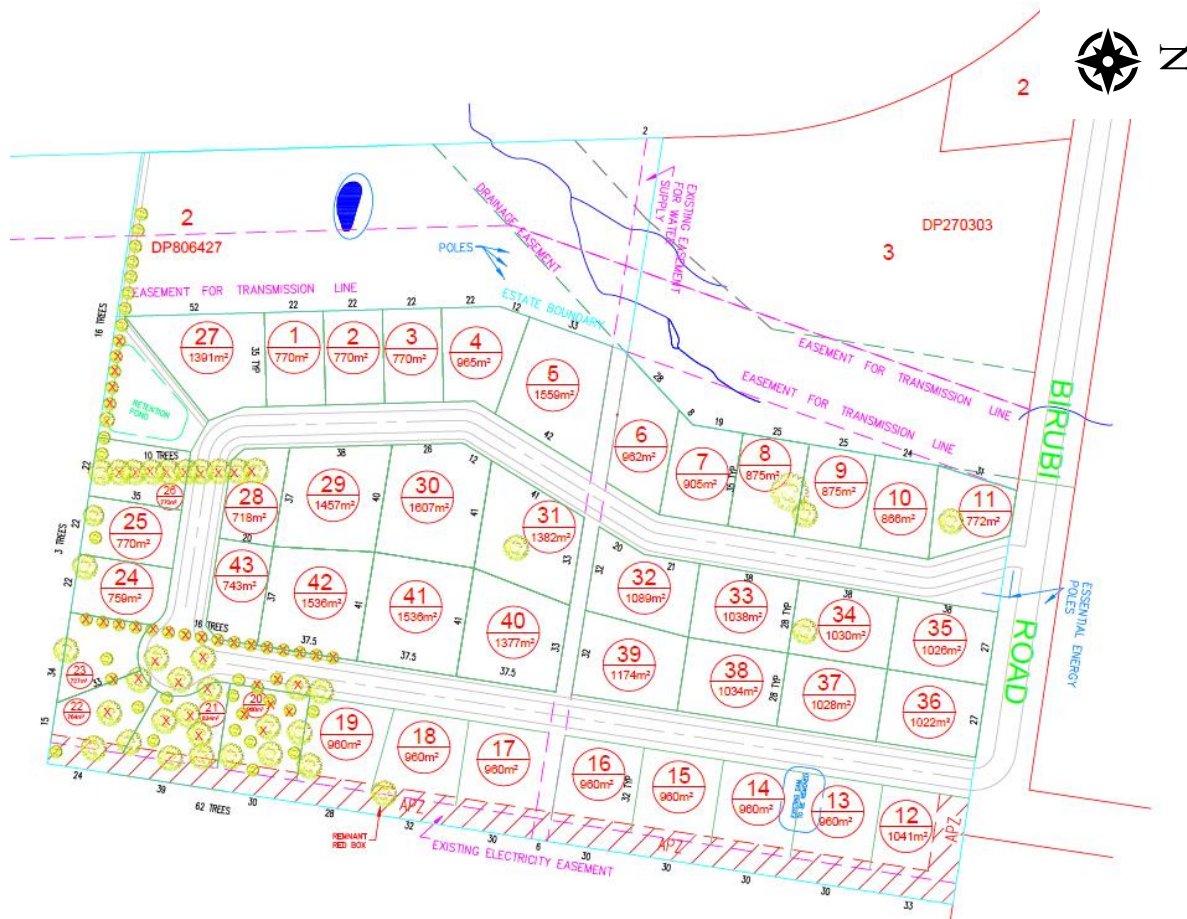


Figure 1: Proposed subdivision.

The proposed subdivision layout is designed around a connecting loop road. Most lots are generally rectangular or square in shape and have been orientated along a north-south street alignment. Proposed lots range in size from 718m² up to 1,607m², however the average lot size is approximately 1,014m². In recognition of the sites' location adjacent to a woodland reserve (One Tree Hill), the development will incorporate an 11-metre-wide Asset Protection Zone (APZ) along its northern and eastern boundaries. This APZ will serve a dual purpose as both an APZ and a buffer to the adjoining

IN1 General Industrial zoned site (previous Drivetrain site). The APZ also contains an 8.2m wide electrical easement.

Road access to the property, while available from Kaitlers Road to the south, will be provided via Birubi Road to the north due to the narrow width of this access handle and the fact that it contains an overhead electrical easement. No direct vehicle access is proposed via Kaitlers Road. Following pre-lodgement discussions, Council's Development Engineer has advised that Birubi Road will need to be upgraded to accommodate the expected traffic volumes generated by the proposal. These works will also require an upgrade to the existing culvert that services the eastern end of Birubi road.

The subject land contains a number of planted and remnant trees and vegetation. More specifically, the subject land contains 121 trees of various ages and varieties. Of these, eight do not require approval for removal as they are less than 4.5 metres in height and 3 metres in branch spread. Of the remaining 113 trees, 49 of these are proposed to be removed in order to construct the proposed subdivision. To minimise tree losses, the subdivision design attempted to retain as many trees as possible. In total, 64 trees will be retained from an amenity and landscape perspective. These trees are located outside of the area of civil works and likely future building sites.

In addition, the development will also require the removal of three trees from within Birubi Road as part of the road upgrade works. These will be at the eastern end of the upgrade, and it is noted that these trees are non-native and planted. An opportunity exists to micro-design the proposed upgraded western section of Birubi Road to avoid or minimise tree loss from the western side of the road reserve. For example, the roadway can be located to the eastern side of the reserve or can meander so as to avoid tree loss. A Condition of Consent is recommended to this effect, should Council approve the development.

Further details regarding the tree removal works are outlined in the Tree Removal Report included in attachment 3.

Other ancillary and associated works proposed as part of the subdivision include the demolition/relocation of a small horse stable located in the south-east corner of the property and the slab and footings of a former outbuilding contained in the south-west corner of the property. In addition, the subdivision requires the filling in of an existing farm dam (approximately 250m²) located in the north-east corner of the property. This dam will be replaced with a new stormwater retention basin located in the south-western corner of the property, to which the subdivision will gravity feed.

The subject site has access to all relevant infrastructure and services including reticulated water, sewerage, electricity, drainage, telecommunications, and gas. These services will be extended and connected to the property as part of the proposed subdivision. In accordance with Council's pre-lodgement advice the existing 3-metre-wide water supply easement that bisects the property in an east-west direction will be protected and retained as per the attached site plan. Similarly, all existing overhead electrical easements will be retained and protected. As mentioned above, the development proposes a stormwater retention basin between proposed lots 24 and 25, which will service the proposed subdivision. The location of this basin has been chosen to allow for stormwater to be gravity fed. The specific area and depth of this basin will be determined prior to the issue of a Construction Certificate.

It is anticipated that the development will take place during 2022 and be completed by the end of 2022 and be available for residential housing construction in early 2023.

Site and Locality Description

The subject site is described as Lot 2 in DP806427 and addressed as 186 Kaitlers Road (alternative address Birubi Road) Springdale Heights. It is located approximately three kilometres north-east of the Lavington Central Business District and approximately 1.3km north-west of the Thurgoona Drive/Hume Highway interchange. The locality of the site is shown in Figure 2 and current site conditions are shown in Figure 3 below.



Figure 2: Site Locality.



Figure 3: Site Conditions (easements shown in pink).

The subject land is located adjacent to an established part of Springdale Heights surrounded by both residential and industrial land uses and is located between Kaitlers Road to the south and Birubi Road to the north. The land forms an axe-shaped parcel with a total area of 7.61 hectares. The topography of the site is undulating, sloping downwards from the north (One Tree Hill) to the south with an overall fall of approximately 19.0 metres over 350 metres. The land is unimproved and vacant with the exception of two small farm dams located in the north-east and south-west corners of the property, as well as several overhead electricity transmission lines that run near the boundaries of the property. In addition, the property also contains the remains of a former building located to the east of the existing southern dam, as well as a small outbuilding and pens located in the south-east corner of the property.

Vegetation comprises mainly planted landscape trees in rows along fence lines and former internal driveways, mainly within the south-east corner of the property. These trees are a combination of species and of varying age and maturity. It is confirmed that none of these contain any hollows and a number of them are non-native or dying/structurally unsound. Groundcovers comprise non-native paddock grasses that have been heavily disturbed from the grazing of sheep and horses.

The site is zoned R1 General Residential, and the proposed subdivision is permissible with consent. It is noted that the site is adjacent to RE1 Public Recreation zone to the west, IN2 Light Industrial zone to the south and IN1 General Industrial zone to the east.

History

A number of planning approvals have previously been issued for the subject land. While these approvals have subsequently expired, they provide some context to the current application. The most recent approval 10.2007.27956.1 was issued by Albury City Council on 24 August 2007 for a 'forty-two (42) lot torrens title subdivision'. This plan was somewhat similar to the current proposal but did differ in some key areas such as it included the primary road access from Kaitlers Road to the south. A copy of the approved subdivision plan is reproduced below:

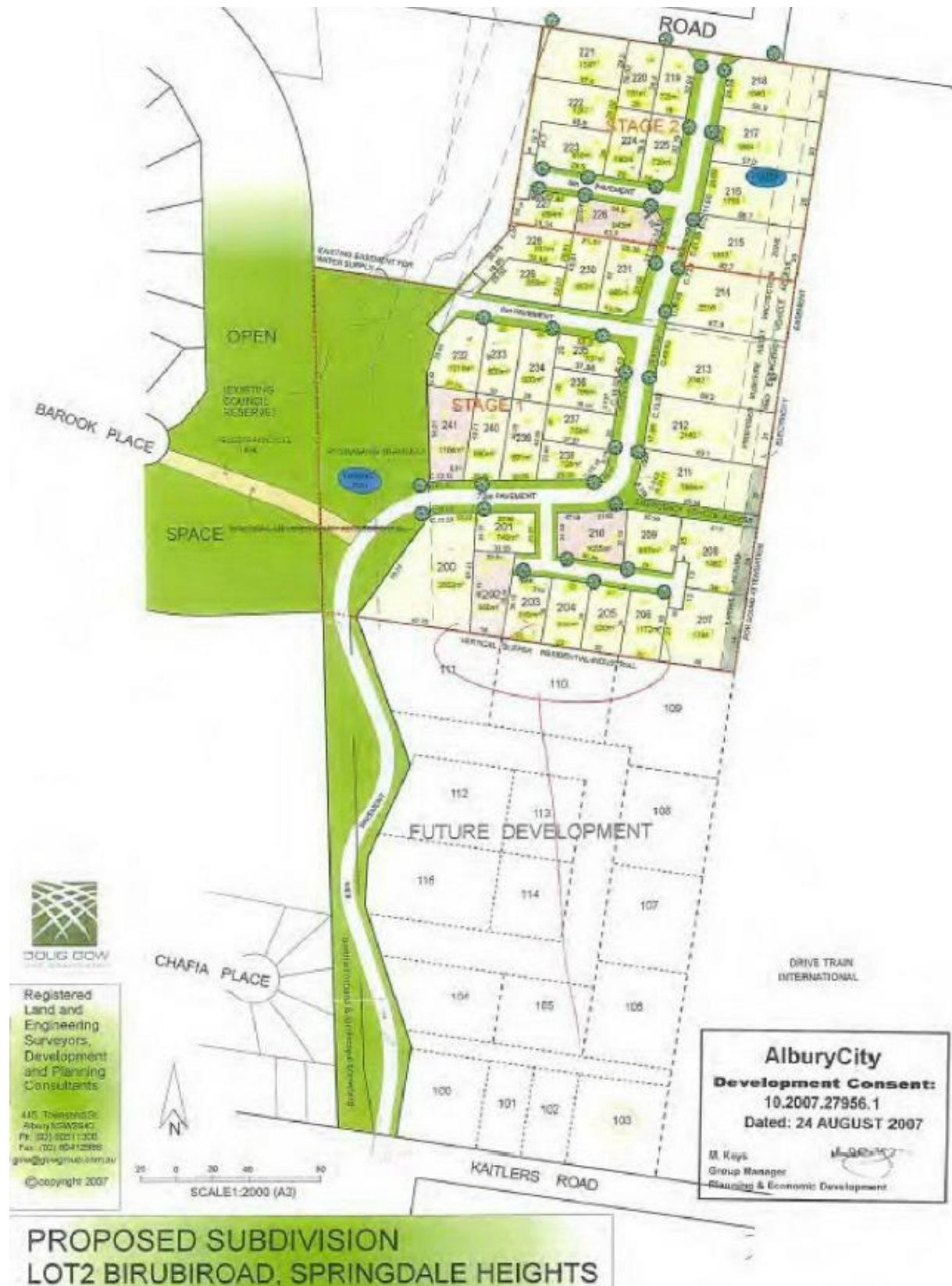


Figure 4: Previous approval

Some differences between the 2007 approval and the current application should be noted:

- The subject property and the land to the south (industrial zoned Lot 1 in DP806427 addressed as 162 Kaitlers Road) was in the same ownership, and therefore it was possible to meander the access road off Kaitlers Road outside of the battle-axe handle.
- While not included in the application, the previous proposal showed potential future industrial development on the adjoining lot to the south. This showed potential connection to the access road to Kaitlers Road. The current application does not, and cannot, include the adjoining land as it is now in different ownership.
- The previous development was proposed in two stages, with Stage 1 requiring access off Kaitlers Road, and Stage 2 having to make a connection to Birubi Road. The current proposal is not staged and only access off Birubi Road is proposed.
- The previous application did not receive any comment from Transgrid. In recent years, Transgrid policy has become quite clear that roads are not supported in their easements.
- The previous application was assessed under Albury LEP 2000 (the subject land was zoned "Living Area Zone") and Albury DCP 2000 and engineering standards and guidelines applicable at the time.

It should further be noted that several discussions between the proponent and Council staff have taken place since the previous Development Consent expired. Importantly, during a meeting with the Team Leader: Town Planning on Monday 19 December 2016, the proponents advised that access via Kaitlers Road was no longer an option, due to the change of land ownership and complications regarding access to the industrial zoned lot to the south. However, the alternative access off Birubi Road was questioned due to the likely opposition from nearby residents. Alternative access was considered (such as to Barook Place and Baranbale Way), but these required going through Council park land which was not supported as the only access point. This was reaffirmed in 2017, and when approached again on 29 July 2020, the proponent was advised that sole access through Council park land to either Barook Place or Baranbale Way was not supported, and that the primary access was to be from Birubi Road (which would require upgrade) or to Kaitlers Road, which has a narrow 15m wide battle axe handle 290m long, under a Transgrid easement and an intersection on Kaitlers Road at a point where there are overhead powerlines crossing, a stormwater inlet pit and an existing residential driveway within 5m. As a result, the application was lodged for access off Birubi Road.

Key Issues

The Development Application Assessment Report is included in attachment 5. The key issues relating to this development are:

Traffic Impact

As stated above, a similar development to the proposed subdivision was approved in 2007, which has since expired. That design provided access to both Kaitlers Road and Birubi Road, providing faster access to the main distributor and avoiding all traffic having to go through the meandering residential access road such as Buronga Drive and Algona Road.

Unfortunately, direct vehicular access to Kaitlers Road is not a feasible option anymore as explained earlier in this report. As a result, the only feasible vehicle access option available to the applicant is

from Birubi Road. This option resulted in objections from residents in the area, which will be discussed under "Submissions" below.

During assessment of the application, Council staff requested a Traffic Impact Assessment to be prepared by a qualified person to address the anticipated impact of increased traffic related to the development. This report was submitted to Council along with other information on 18 June 2021. Please note that this report was done for 41 lots at the time; the layout was changed to 43 later, on 22 September 2021.

In summary, the report investigates the future traffic impacts on the key intersection of Buronga Drive and Birubi Road and the existing road network arising from development of the site. The report concluded that the Buronga Drive and Birubi Road intersection will continue to operate well within capacity beyond 2024 with no delays and minimal effect on the wider traffic network of Springdale Heights.

The report included the following traffic counts and projections:

Address	Lot 2 DP806427 Birubi Road, Springdale Heights, City of Albury
Road Hierarchy	Birubi Road is classified as a minor residential road and is under the management of the Albury City Council.
Proposed Use	Residential Housing Estate 41 dwelling sites
Access	Site frontage extended Birubi Road
Existing Traffic volumes and Speed Environment	Turning movements peak hour counts (2021) intersection of Buronga Drive and Birubi Road Buronga Drive West bound direction AM 9vph and PM 7vph East bound direction AM 4vph and PM 10vph Birubi Road North bound direction AM 2vph and PM 10vph South bound direction AM 6vph and PM 3vph
Traffic Generation	Information obtained from RMS Guide to Traffic Generating Developments suggests in the AM 32vph, PM 29vph and daily vehicle peak movements of 303 generated by the development

Figure 5: Extract from Traffic Impact Assessment (Peter Meredith Consulting, 9 June 2021, pg.6).

The intersection of Buronga Drive and Birubi Road is considered a key intersection because the future additional traffic generated by the residential estate will access Buronga Drive and the wider street network by passing through this intersection. The current level of service for this intersection is well within capacity, and experiences free flow and no delays.

The proposed development consists of the following elements:

- 43 lots ranging in size from 718m² up to 1,607m².
- Extending and widening of Birubi Road carriageway to 8.0m wide from Buronga Drive to the development site.
- Access will be via Buronga Drive by removing the existing layback type crossing at the intersection with Birubi Drive to create an upgrade 8.0m wide at grade T-junction intersection.
- Adjustments to stormwater drainage.
- Adjustment to connections of existing property access driveways.

Traffic generation levels for the proposed residential subdivision are established using the rates suggested in the *Traffic for NSW Guide to Traffic Generating Developments Technical Direction TDT 2013/04a Updated Traffic Surveys*. By applying the above rates, the proposed fully developed subdivision (by year 2024) could potentially generate:

- Daily vehicle trips = 43 lots x 7.4 = 318 vehicles per day.
- PM peak hour vehicle trips = 43 lots x 0.78 = 34 vehicles per hour.
- AM peak hour vehicle trips = 43 lots x 0.71 = 31 vehicles per hour.

Note: These numbers were re-calculated for 43 lots by the author of this report following the amended subdivision plan.

This modelling shows that the Buronga Drive and Birubi Road intersection will continue to operate well within capacity in the morning and afternoon peak periods with a high level of service for all movements. Table 2 in the Traffic Impact Assessment Report (pg. 15) describes the level of service anticipated as follows:

"A condition of free-flow in which individual drivers are virtually unaffected by the presence of others in the traffic stream. Freedom to select desired speeds and to manoeuvre within the traffic stream is extremely high, and the general level of comfort and convenience provided is excellent."

The report also found that the sight distance at the Buronga Drive and Birubi Road intersection from the west (east bound) on Buronga Drive does not meet the standards for a 50km/h local street. Due to a crest, the sight distance is 80m instead of 97m. It is noted, however, that this is an existing condition not created by the development.

The report recommended that Albury City Council concur with the layout of the proposed residential housing estate development and the upgrade of the existing T-junction intersection of Buronga Drive and Birubi Road.

Council's Senior Development Engineer and Team Leader: Traffic and Transport also assessed the application and have no objections to the proposed development from a traffic point of view. It is further noted that under the provisions of *State Environmental Planning Policy (SEPP) Infrastructure 2007*, only subdivision of land resulting in more than 200 lots would require referral to Transport for

New South Wales (TfNSW). As the proposal is for 43 lots and does not have access to a classified road, no referral to TfNSW was required.

Section 4.15 of the *Environmental Planning and Assessment Act 1979 No 203* (the EP&A Act) provides for the matters for consideration when assessing a development application. Subsection (b) requires consideration of the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality.

It is acknowledged that the addition of 43 new residential lots and the subsequent increase in traffic would have some impact on the surrounding built environment and resident amenity, given the proposed development has Birubi Road as a single point of entry and exit. However, the potential impact on the existing residents is not considered substantial or unreasonable.

For example, property value is not a matter for consideration under the EP&A Act. Furthermore, traffic increase (and traffic in general) is not a consideration when determining property values (*telephone meeting with Opteon Solutions Professional Valuers, 5 August 2021*).

The *NSW Road Noise Policy* (RNP) published by the Department of Environment, Climate Change and Water NSW, defines criteria to be used in assessing the impact of such noise. External (outdoor) noise assessment criteria shows that a planning level of 45–55 dB(A) LAeq appears to be the most widely used night-time criterion, with a day-time criterion set 5–10 dB above this. This is echoed by the *Environmental Criteria for Road Traffic Noise* published by the Environment Protection Authority (EPA). In all cases, traffic arising from developments with potential to create additional traffic on local roads should not lead to an increase in existing noise levels of more than 2 dB. As neither the type of vehicle nor the speed limit of the road is set to change, and the frequency of traffic is at approximately 30 vehicles per hour during peak times (one car every two minutes), it is not considered likely that noise levels will significantly increase. In addition, Birubi Road will be upgraded with a new surface, reducing traffic noise.

It is noted that traffic impact is the predominant concern of submissions received, and therefore these issues will be repeated to some extent.

Tree Removal

As mentioned earlier in the report, the development proposes the removal of trees from the site and, as a result of required upgrades to Birubi Road, trees from the Birubi Road road reserve.

According to the Tree Removal Report submitted as part of the application, the subject land contains 121 trees of various ages and varieties. The report identified 49 of these require consent to be removed in order to construct the proposed subdivision. Vegetation to be removed is grouped in four separate patches and primarily comprises planted vegetation undertaken by the landowner 20 years ago.

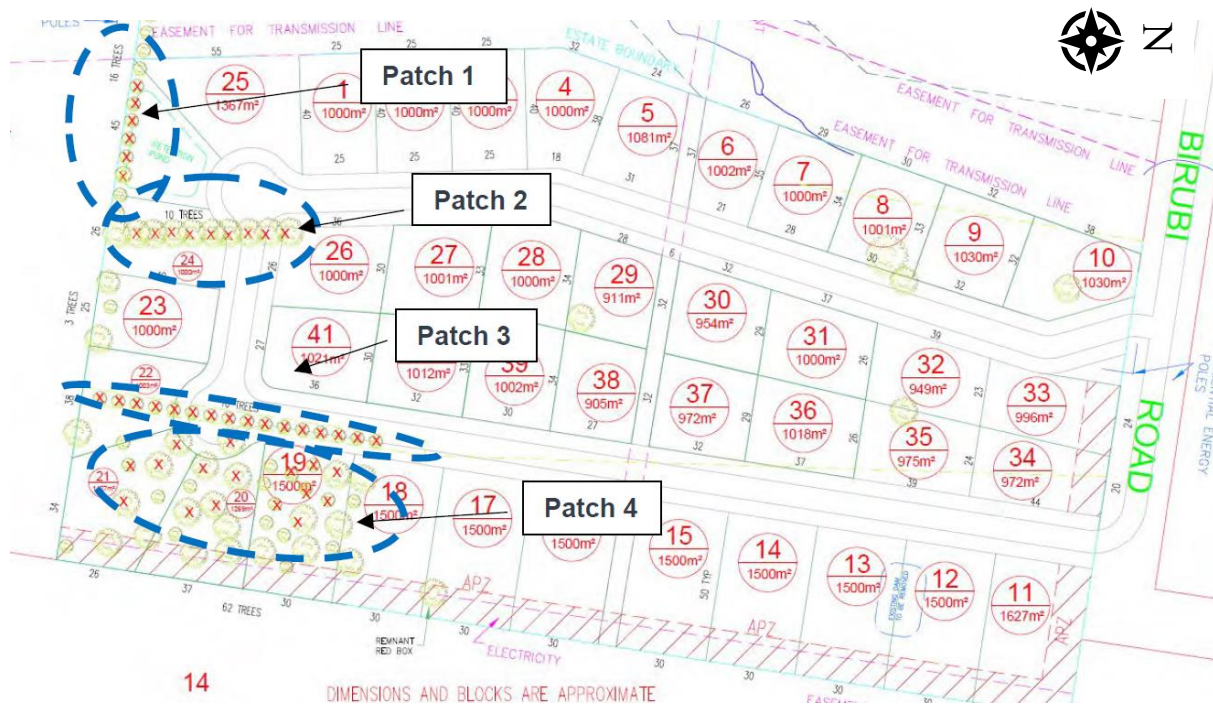


Figure 6: Extract from tree removal map.

The tree removal report concluded that the habitat quality of these species is relatively insignificant as the trees are not hollow bearing, do not provide connections to surrounding habitat in the area and the woodland birds which may use them as habitat are highly mobile and can relocate in the event of their removal. Furthermore, there is more superior quality habitat located immediately to the north-east on One Tree Hill that threatened species can utilise.

Council's Environmental Planner and Arborist conducted a site inspection and reviewed the information provided by the applicant to verify these findings. They found that it is likely that an additional eight to ten trees would need to be removed to accommodate carriageways/services, etc. They further noted that any trees that are "opportunistically retained" are likely to require removal later at the individual lot development stage. Conditions of Consent were recommended, should Council approve the development, requiring an Environmental Management Plan, a Fauna Management Plan, a Landscape Plan and an Erosion and Sediment Control Plan prior to the issue of a Construction Certificate.

It is noted that the majority of the trees proposed to be removed comprise vegetation previously planted by the subject landowner and includes non-native vegetation. Furthermore, the subject land comprises Biodiversity Certified land, which has been zoned for residential purposes. Accordingly, any tree losses associated with the development of this land have been off-set elsewhere across the city via the establishment and embellishment of land zoned for environment protection purposes. A recent review of Council's biodiversity certification agreement has confirmed that the objectives of biodiversity certification have been achieved with an overall improvement of biodiversity values across the city.

In accordance with Section 8.4 of the *Biodiversity Conservation Act 2016*, an assessment of the likely impact from development on biodiversity certified land is not required for the purposes of Part 4 of

the *Environmental Planning & Assessment Act 1979* and development is not required to take into consideration the likely impact on biodiversity of the development carried out on that land.

However, upon further investigation of the *NSW Biodiversity Values Map*, it is confirmed that this layer applies to a single tree on site, being the remnant Redbox contained on proposed Lot 17. Given that the proposed subdivision seeks to retain this tree, the development will not have affect land mapped on the Biodiversity Values Map. Therefore, the need to prepare a Biodiversity Development Assessment Report (BDAR) is not considered necessary in this instance.

In addition, the development also proposed the removal of eight (8) trees from within Birubi Road as part of the road upgrade works. Three of these will be at the eastern end (Patch 5), while another five are located at the western end (Patch 6).



Figure 7: Extract from tree removal map (Birubi Road).

Council's Environmental Planner and Arborist did not support the proposed upgrading/reconstruction of Birubi Road (which includes an 8m wide pavement, 2 x 5.5m wide footways with a 1.5m wide concrete footpath and street lighting), as the works will result in the removal of five significant trees within the area of Birubi Road adjacent to 48 Buronga Drive.

It was requested that the requirement for a footpath along Birubi Road be removed and instead, consideration be given to locating a footpath along the powerline easement, connecting the subdivision through to Kaitlers Road (or a footpath connection is created through the subdivision and the Council Reserve to the west of the site connecting through to Barook Place). These options were considered to provide more direct routes through the area for pedestrians and minimise tree removal in the area.

It was recommended that the Birubi Road surface when upgraded be relocated to the eastern side of the road reserve to minimise the impacts on significant native trees in the area and in particular enable the retention of the large remnant white box tree located within the Birubi Road corridor adjacent to 48 Buronga Drive.

Council's Senior Development Engineer and Team Leader: Traffic and Transport concurred and suggested a shared 2.5m wide concrete path is to be provided from Kaitlers Road along the western boundary of the site through the retention basin site adjacent to proposed Lot 25, with a link through the existing Council reserve to Barook Place.

This will reduce the width required for the upgrade of Birubi Road. The applicant has agreed to realign/relocate the proposed upgraded section of Birubi Road that connects with Buronga Drive to the eastern side of this current alignment. Specifically, the applicant agreed to micro-design this roadway to avoid the need to have to remove five (5) large significant trees located on the western side of Birubi Road adjacent to 48 Buronga Drive. A Condition of Consent to this effect will be imposed should Council approve the development.

Submissions

The Development Application was lodged as Integrated Development on 16 March 2021 and publicly notified between 24 March 2021 and 7 May 2021. During this period, Council received 17 submissions, including a petition signed by 39 individuals. Eight of the signatories were people who also made individual submissions. Several submissions are exact copies of each other. Copies of the submissions received are included in attachment 4.

In summary, the submissions raised the following concerns:

- *Traffic Impact and traffic safety*
Most submissions raised concerns over anticipated traffic impact. Concerns relate to the width of Birubi Road and connected streets such as Buronga Drive and Baranbale Way, anticipated bottlenecks, increased risk of accidents, delays, and loss of amenity.

Comment: As discussed in the report, traffic impact concerns were anticipated and acknowledged. A Traffic Impact Assessment was requested and is included in attachment 2. The report investigated and modelled the future traffic impacts on the key intersection of Buronga Drive and Birubi Road and the existing road network arising from development of the site. The report concluded that the Buronga Drive and Birubi Road intersection will continue to operate well within capacity beyond 2024 with no delays and minimal effect on the wider traffic network of Springdale Heights. Council's Senior Development Engineer and Team Leader: Traffic and Transport also assessed the application and have no objections to the proposed development from a traffic point of view.

While it is acknowledged that the addition of 43 new residential lots and the subsequent increase in traffic would have some amenity impact on the surrounding built environment, such impact on the existing residents is not considered substantial, unreasonable, or unexpected given the residential zoning and frontage to Birubi Road. The resultant loss of freedom of movement and comfort resulting from congestion has been found to be negligible by the Traffic Impact Assessment. Many of the issues highlighted by submitters, such as vehicles parking in the road and speeding, is the result of driver behaviour and not the road network. Motorists are expected to drive to conditions and elements such as fog, rain or reduced sightlines should always be taken into consideration by the driver, regardless of the type of

road they are on. Additionally, Birubi Road will be upgraded to contemporary standards and provide appropriate and safe vehicle access.

The proposed addition of 43 lots represents a 4% increase in the number of residential lots in Springdale Heights and a 7% increase in Springdale Heights lots east of Kemp Street. This is considered a minor increase and the local road network has sufficient capacity for this. Considering that not all dwellings are occupied all the time, and that expected traffic numbers equate to one car every two minutes, the expected traffic conditions reflect reasonable urban conditions. The proposal's impact on residential amenity is not significant enough to warrant refusal of the application.

- *Pedestrian Safety*

Related to traffic impact, most submissions raised concerns over pedestrian safety as a result of the lack of footpaths along local streets, especially Birubi Road.

Comment: Currently, most roads in the area do not have concrete footpaths, most notably Buronga Drive, Algonia Road, Alawarra Road, Darri Drive and Darrawarra Drive. However, the lack of formed footpaths does not equate to not having a safe area to walk. All roads are sealed with kerb and gutter and there is a clear distinction between motorist and pedestrian areas. A review of the Australian Road Deaths Database (*Australian Department of Infrastructure, Transport, Regional Development and Communication – June 2021*) reveal no pedestrian deaths in Albury since the record began in 1989, despite the apparent lack of concrete footpaths. A shared path is proposed along the battle-axe handle to Kaitlers Road connecting through AlburyCity park land to Barook Place to add pedestrian options to the area. Council's infrastructure program continuously adds concrete footpaths around the city, and Buronga Drive and Algonia Road additions are being considered amongst others.

- *Increase in noise and pollution*

Also related to traffic impact, some submissions raised concerns that increased traffic movements in the area will increase noise and pollution.

Comment: As neither the type of vehicle nor the speed limit of the road is set to change, and the frequency of traffic is at approximately 30 vehicles per hour during peak times (one car every two minutes), it is not considered likely that noise or pollution levels will significantly increase. In addition, Birubi Road will be upgraded with a new surface, reducing traffic noise.

As mentioned above, the proposed addition of 43 lots represents a 4% increase in the number of residential lots in the area, which is a minor increase considering there is not a lot of opportunity for further development in the area as the subject property is the last remaining large residential lot.

- *Increase in Crime*
Some submissions predicted an increase in crime such as vandalism and theft, especially in the adjoining park lands, as a result of increased pedestrian thoroughfare.

Comment: The proposed subdivision has been considered with Crime Prevention Through Environmental Design principles which has not identified any design elements which would increase the potential for criminal activity. The application was also referred to NSW Police for comment who advised no objection to the proposed subdivision.

- *Negative impact on 'Rural Character'*
Some submissions objected to the loss of 'rural character' afforded by the vacant lot.

Comment: The misconception that vacant residential land creates 'rural character' is not uncommon. However, the land has been zoned for residential development for in excess of 20 years. Given subdivision approval for 42 lots was granted in 2007, the R1 General Residential zoning and minimum lot size of 450m², it is not unreasonable to expect that a residential development (subdivision) would occur on the property. There are vast areas (more than 40 square kilometres) of Environmental zoned land adjacent to the north of the site and Springdale Heights area, maintaining a 'rural' character that is not affected by the addition of 43 lots.

- *Tree removal (both on site and from Birubi Road road reserve)*
Several submissions objected to the proposed tree removal and its impact on wildlife, especially birds, as well as views and general environmental amenity. Submissions also highlighted the lack of justification for tree removal in the Birubi Road road reserve.

Comment: It is acknowledged that the tree report submitted with the application was insufficient, hence an improved report was requested and later submitted. The updated Tree Removal Report concluded that the habitat quality of trees is very low. The trees proposed for removal represent less than 10% of the area of the site and are planted in rows in the south-eastern corner. Furthermore, the subject land is Biodiversity Certified and zoned for residential purposes. Accordingly, any tree losses associated with the development of this land have been off-set elsewhere across the city, and assessment of the impact on biodiversity is not required for the purposes of the EP&A Act.

Council's Environmental Planner and Arborist reviewed the information provided by the applicant and recommended Conditions of Consent requiring an Environmental Management Plan, a Fauna Management Plan and a Landscape Plan prior to the issue of a Construction Certificate.

Tree removal has been substantially addressed by the applicant after the notification period, and significant consideration has been given to potential tree removal in Birubi Road. Council staff agree with the removal of footpaths from the Birubi Road upgrade design and micro-design of the carriageway to avoid removing any trees on the western end of Birubi Road. A Condition of Consent to this effect will be imposed should Council approve the development.

As with most residential subdivisions, including the exiting Springdale Heights, opportunities exist for landscaping and tree planting in appropriate locations to enhance the development and residential amenity.

- *Concerns with potential shared path to Kaitlers Road*
Some submissions raised concerns regarding the increased activity along the potential shared path down the battle-axe handle to Kaitlers Road and the adverse impacts on the adjoining residences.

Comment: The use of this route for pedestrians and cyclists is not considered to have an unreasonable adverse impact on adjoining residences. The alternative, which is the use of this access handle for the main vehicular access to and from the development, has the potential for a significantly greater impact upon the amenity of adjoining residences.

- *Alternative access to Kaitlers Road preferred*
A number of submissions raised the fact that the previously approved subdivision for the site had a proposed roadway connecting to the south along this powerline easement and indicated their preference for that solution.

Comment: This option has been considered during pre-lodgement discussions with the applicant and found to be unfeasible for a variety of reasons, as discussed in the report. In summary, the available battle-axe handle is too narrow to provide a suitable access road and associated infrastructure such as utility services, footpaths and lighting, is within a large electricity easement where both Transgrid and Essential Energy no longer support the construction of roads along the length of their easements and infrastructure, and the resulting intersection will be inappropriately located at the convergence of infrastructure and in close proximity to a residential driveway. Instead, this access is proposed to be a shared pedestrian and cycle path providing quick and easy access to existing footpaths in Kaitlers Road. This access may also be used in case of emergencies by response units.

- *Views of open space*
Some submissions objected to the loss of views resulting from residential development.

Comment: The Land & Environment Court has a well-established planning principle in respect of the assessment of potential impacts of development on views, which is set out in case law. The principle holds that no-one has a proprietary right to retain all, or part of the views enjoyed (or capable of enjoyment) from their land. The Court specifically acknowledges that entire loss of a view in some cases (although a devastating impact) could be reasonable in the circumstances. The High Court also held that a property owner does not own the views from his or her land. In this instance, the proposed development is well within the objectives of the zone and the controls of the Albury Development Control Plan, and it would be unreasonable to refuse compliant development in order to protect views.

- *Further development*
Some submissions questioned the possibility of even further development should this application be approved.

Comment: Any future development in the area will be considered on merit and under relevant legislation. This includes the land zoning under the Albury Local Environmental Plan. It is assumed the submission refers to similar residential subdivision, in which case it is noted that there is limited undeveloped residential zoned land left in the vicinity, and it is considered unlikely that similar development proposals will follow.

- *Negative impact on property values*
Some submissions argued the proposed development, and specifically the increased traffic and loss of open spaces, will reduce the value of their homes.

Comment: Property value is not a matter for consideration under the EP&A Act. Furthermore, traffic increase (and traffic in general) is not a consideration when determining property values (*telephone meeting with Opteon Solutions Professional Valuers, 5 August 2021*). There is no evidence that the subdivision of residential zoned land will have any detrimental impact on the property values of adjacent land.

- *Homes were bought under belief no further development will occur*
Several submissions suggested that homes in the area were desirable and bought due to the low number of residences and quiet nature of the area and the belief (or being told) that no further development will occur.

Comment: The land has been zoned for residential development for in excess of 20 years. Given its size of 7.61 hectares and a minimum lot size of 450m² throughout Springdale Heights and indeed the development site, it is not unreasonable to expect that a residential development (subdivision) would occur on the property, especially considering subdivision approval for 42 lots was granted in 2007. The proposed 43 lots with an average lot size of 1,014m² is not considered to drastically change the residential density in the area. It is also apparent that the proposal is utilising the last piece of residential land capable of such a subdivision in the area.

- *Water pressure in area already low*
Some submissions raised concerns over the ability of the water network to accommodate further development, as water pressure in the area is already low.

Comment: Council's Senior Development Engineer had no concerns about the development and specifically about the provision of reticulated water. Standard Conditions were recommended relating to utility services, including the following:

The existing 525 diameter trunk water main under new road pavement is to be lowered and replaced with PN 35 D.I.C.L pipe with a minimum cover of 1200 mm to the proposed finished surface level all at the developers cost

No conditions relating to limited water pressure were recommended.

- *Two exits required in case of fire.*
Some submissions raised concerns that the development will be at risk in case of fire due to the single entrance and exit and will therefore also put other residences at risk during emergency evacuations.

Comment: The application was referred to the NSW Rural Fire Service as Integrated Development. General Terms of Approval was issued on 10 June 2021. Rural Fire Service conditions will be added to the Development Consent, should Council approve the development. Clarification was sought from the Rural Fire Service regarding the following condition:

- a. Subdivisions of three or more allotments have more than one access in and out of the development.*

The Rural Fire Service responded on 16 June 2021 as follows:

The plans submitted to the NSW RFS for this application show a public road layout that would satisfy the condition outlined (there are two accesses from Birubi Road). This maximises the ability for occupants to safely egress whilst emergency services personnel are accessing the area.

The wording is included as part of our standard subdivision conditions for public roads.

No changes are required.

Options

The Council has the following options in relation to this report:

1. Approve the application; or
2. Approve the application, subject to conditions; or
3. Defer the application for further information or redesign; or
4. Refuse the application.

Based on the assessment of the application and the manageable impacts arising from the proposed development, this report recommends that Council resolves to approve the application subject to the conditions contained in Draft Determination, included as attachment 6 to this report as per Option 2.

Conclusion

Council staff have assessed the proposed development with regard to the submitted information, issues raised during public notification, and planning controls and requirements contained within ALEP 2010, ADCP 2010 and relevant State legislation. It is the role of Council staff to objectively weigh and consider the submitted information as well as any issues raised during public notification.

This involves balancing the issues identified by all parties and will not always result in agreement with the noted opinion of any of these parties.

The development is considered appropriate to the context and setting of the site. The proposed development is considered consistent with the objectives of the R1 Zone and the assessment has concluded that the proposed development provides a suitable and satisfactory planning outcome.

Recommendation

That Council:

- a. Receives the contents of this report; and
- b. Grants consent to Development Application 10.2021.38281.1 for a forty-three (43) lot torrens freehold title residential subdivision with associated civil works on Lot 2 in DP806427 situated at 186 Kaitlers Road, Springdale Heights, subject to the conditions contained in the Draft Determination, included at attachment 6 to this report.

Attachments

1. Subdivision Plans (DOC21/212273).
2. Statement of Environmental Effects including Traffic Impact Assessment (DOC21/204999).
3. Tree Removal Report (DOC21/144839).
4. Submissions (DOC21/207438).
5. Development Application Assessment Report (DOC21/175676).
6. Draft Determination (DOC21/176697).