

AlburyCity – Planning & Development Committee

AGENDA

6B Albury Local Environmental Plan 2010 – Planning Proposal: Inclusion of Model Rural Subdivision Clause (DOC15/45404)

DATE 22 May 2015

CONFIDENTIAL

Personnel Matters ☐

YES ☐

Commercial ☐

NO ☒

Legal ☐

If yes please tick one of the following reasons

Security ☐

Personal Hardship ☐

ITEM FOR DECISION ☒

Meeting Date Monday 15 June 2015

ITEM FOR NOTING ☐

Meeting Date

FURTHER ENQUIRIES TO Matt Johnson
Planning and Environment

PHONE 6023 8173

Purpose of Report

The purpose of this report is to seek the Committee's support for a Planning Proposal that seeks to amend the *Albury Local Environmental Plan 2010* (ALEP 2010) by including Model Clause 4.2AA *Exceptions to minimum lot sizes for certain rural subdivisions* and undertake those actions necessary to enact the Planning Proposal.

A copy of the model rural subdivision clause is provided as *Attachment 1* for Councillors information.

In addition, a copy of the Planning Proposal is available for Councillors information as *Attachment 2*.

Background

At the time of preparing ALEP 2010, a number of non-agricultural or primary production land uses were permitted with consent in Albury's rural zones, being the RU1 Primary Production, RU2 Rural Landscape and RU4 Primary Production Small Lots zones.

These non-agricultural uses were nominated for inclusion within the rural zones at the time as they generally supported rural land use activities, were ancillary to those rural activities or had similar off-site impacts to other rural land use activities permitted within the zones.

Notwithstanding, given the minimum lot size controls required under ALEP 2010, being a 100ha minimum lot size in the RU1 and RU2 zones and a 40 or 80ha minimum lot size in the RU4 zone, the establishment or creation of lots for these purposes was severely limited.

Recently, Council has received a number of enquiries regarding the possible establishment or creation of rural zoned properties (less than the minimum lot size) for uses other than 'primary production' purposes, which are permitted under the Land Use Tables of the relevant rural zones. At present, the subdivision of land less than the current minimum lot size to facilitate a use other than for 'primary production' purposes is prohibited.

The proposal seeks to amend ALEP 2010 by including an additional model clause that allows for the subdivision of rural land for a use other than primary production purposes (other than a dwelling house

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or dual occupancy), which is permissible in the zone, is generally consistent with the objectives of these zones and will not result in any adverse impacts upon the rural lands of Albury.

Issues

The preparation of the Planning Proposal supports *Albury 2030* strategic actions under the themes of 'A Growing Economy' including:

- *Maintain a diversity of options amongst all sectors and continue to meet demand for opportunities for land development;*
- *Promote Albury for industry and business;*
- *Promote Albury as a major regional economy and the regional city of choice for lifestyle, career and investment opportunities; and*
- *Supports and promote business and business opportunities across all sectors to continue to foster economic diversity.*

The proposed inclusion of Clause 4.2AA in ALEP 2010 is consistent with the above objectives, as it seeks to maintain diversity in Albury's economic base and provide additional opportunities for business and industry investment on rural lands for non-agricultural purposes, by providing greater flexibility and use of this land.

The proposed inclusion of Clause 4.2AA does not derogate from the aims and objectives of the *Environmental Planning & Assessment Act 1979*, *State Environmental Planning Policy (Rural Lands) 2008*, the NSW Department of Planning's; *Guide to Preparing Local Environmental Plans* and *Guide to Preparing Planning Proposals*, as well as the *Draft Rural Lands Strategy for Table Top and Splitters Creek* (currently being prepared).

Discussion

AlburyCity is seeking to amend ALEP 2010 in response to a number of recent enquiries regarding the possible creation of rural zoned properties (less than the minimum lot size) for uses other than for 'primary production' purposes, which are currently permitted under the Land Use Tables of the relevant rural zones.

At present, the subdivision of land less than the current minimum lot size to facilitate a use other than for 'primary production' purposes is prohibited.

The proposed amendment therefore seeks to amend ALEP 2010 by including an additional model clause that allows for the subdivision of rural land for non-primary production purposes less than the minimum lot size, which is generally consistent with the objectives of these zones, whilst not departing from the intent of ALEP 2010.

The subject Planning Proposal has been prepared following discussions and advice from NSW Department of Planning & Environment (NSW DPE) regional staff and it is noted that the proposed clause is a model clause that has been adopted by a number of other regional and rural councils including Greater Hume Shire, Walcha, Yass Valley, Upper Hunter and Tenterfield.

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Given the wide range of land uses permitted within Albury's rural zones and the restrictions created by the current minimum lot size provisions, the strategic planning team is recommending that Council adopt Clause 4.2AA to allow for the more flexible use of rural land.

Whilst the predominant uses permitted within Albury's rural zones relate to agriculture and other associated uses, there are a number of other land use types that are permitted within the rural zones.

Table 1 provides a summary of the non-agricultural uses that are currently permitted within Albury's rural zones:

Table 1: Permitted Land Use Types within Albury's Rural Zones:

RU1 Primary Production	RU2 Rural Landscape	RU4 Primary Production Small Lots
• Landscape material supplies; • Plant nurseries; • Roadside stalls; • Highway service centres; • Veterinary hospitals; • Airstrip; • Helipad; • Transport depots; • Community facilities; • Public administration buildings; • Research stations; • Recreation areas; • Recreation facilities (major); • Recreation facilities (outdoor).	• Highway service centres; • Veterinary hospitals; • Airstrip; • Helipad; • Community facilities; • Correctional centres; • Information and education facilities; • Research stations; • Recreation areas; • Recreation facilities (outdoor).	• Hardware and building supplies; • Landscape material supplies; • Plant nurseries; • Roadside stalls; • Timber yards; • Highway service centres; • Veterinary hospitals; • Airstrip; • Helipad; • Community facilities; • Information and education facilities; • Public administration buildings; • Research stations; • Recreation areas; • Recreation facilities (outdoor).

The proposed change is sought due to the potential demand for such land use types, given Albury's position within the wider regional and rural catchment area of the Murray and Riverina. This is also considered appropriate given Albury's geographical location and operation as a logistics hub.

Whilst it is acknowledged that subdividing land within rural areas could create issues regarding land fragmentation and land use conflicts, given the already fragmented nature of rural land within Albury and the specific conditions of a proposed development and development site, these matters can be deferred to the development application, assessment and determination process.

It is also noted that the proposed clause **does not allow** for the subdivision of rural land less than the minimum lot size for **residential purposes** as it excludes both dwelling houses and dual occupancies.

Similarly, the subject Planning Proposal will also not adversely affect the productivity or agricultural viability of Albury's rural lands given the already fragmented nature of these lands and the large

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amount of rural lifestyle and rural residential land already present within the rural areas as outlined in the *Draft Rural Lands Strategy for Table Top and Splitters Creek* (currently being prepared).

It is further noted that the subject proposal does not seek to reduce the area of rural zoned land across Albury and does not propose any additional land uses that would compromise the function of these zones.

Risk

- Business Risk

The level of Business risk associated with the planning proposal is considered low. Notwithstanding, in the absence of amending ALEP 2010, the implications of not proceeding with this Planning Proposal could be significant for some businesses and developments as it may restrict a number of existing non-agricultural and non-residential uses currently located or proposed within rural areas, which are currently permitted under the land use tables for these rural zones.

- Public Risk

The level of Public risk associated with the planning proposal is considered low. Nonetheless, the proposal does seek to allow the subdivision of land within rural zones less than the minimum lot size for non-primary production purposes (excluding dwelling houses and dual occupancies), which in turn could create land fragmentation or land use conflicts.

Given that the planning proposal does not seek to allow any additional land use types within rural areas that would compromise Albury's rural lands, but rather provide a level of flexibility to help support these uses through the subdivision of land less than the minimum lot size, matters regarding potential land fragmentation and land use conflicts can be deferred to the development application, assessment and determination process.

Community Engagement

Due to the minor nature of the planning proposal and the fact it is a model clause that does not affect the permissibilities for rural zoned land or reduce the amount of rural zoned land under ALEP 2010, Council will be seeking a Gateway Determination without public exhibition. This will facilitate a simple transition to correct a minor anomaly. Council will also be guided by the NSW DPE in regards to public exhibition.

Should the NSW DPE determine that public exhibition is required, the formal public exhibition process will be based on a separate Community Engagement Plan inclusive of a table detailing engagement techniques and timeframes and a copy of this Table has been included with this report and marked as *Attachment 3* for the reference and information of Councillors.

The communications table includes provision for the following activities if required:

- Notification letters dispatched to key stakeholders and interested parties prior to exhibition commencement;
- Public notice published in the Border Mail;

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- Static displays containing all exhibition material for viewing purposes in the foyer of the Council Administration Building, Library/Museum and Lavington Library;
- All exhibition material being made available on the AlburyCity website including the ability to make an electronic submission also being made available on the AlburyCity website; and
- Strategic Planning staff available (on demand or by appointment) to assist with any inquiries relating to the Planning Proposal.

Options

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

1. Endorse the Planning Proposal that seeks to include Clause 4.2AA into Part 4 of ALEP 2010 as it relates to exceptions to minimum lot sizes for certain rural subdivisions and forward this to the NSW Department of Planning & Environment seeking Gateway Determination; or
2. Take no further action with regards to the Planning Proposal and the proposed amendment.

In this instance, it is recommended that the Committee proceed with Option 1 as outlined above.

Conclusion

The planning proposal seeks to amend Part 4 of ALEP 2010 by including Model Clause 4.2AA *Exceptions to minimum lot sizes for certain rural subdivisions*, to allow for more flexible use of land within Albury's rural zones (subject to Council consent).

Given the wide range of land uses permitted within Albury's rural zones and the restrictions created by the current minimum lot size provisions, it is recommended that AlburyCity adopt Model Clause 4.2AA, which will allow for the subdivision of land less than the minimum lot size for non-primary production purposes (excluding dwelling houses and dual occupancies).

The subject Planning Proposal has been prepared following discussions and advice from NSW Department of Planning & Environment regional staff and is a model clause that has been adopted by a number of other regional and rural councils including: Greater Hume Shire, Walcha, Yass Valley, Upper Hunter and Tenterfield.

Whilst it is acknowledged that subdividing land within rural areas could create issues regarding land fragmentation and land use conflicts, these matters can be deferred to the development application, assessment and determination process.

Accordingly, Council support is now sought to endorse the Planning Proposal and to seek NSW Department of Planning and Environment authority to progress the proposal as an amendment to ALEP 2010, pursuant to Part 3 of the *Environmental Planning & Assessment Act 1979* as a 'delegated planning proposal'.

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It is reiterated that due to the minor nature of the planning proposal and the fact it is a model clause that does not affect the permissibilities for rural zoned land under ALEP 2010, Council will be seeking a Gateway Determination **without** public exhibition.

Recommendation

That the Committee recommends to Council that Council:

- a. Endorse the Planning Proposal and forward it to the Minister for Planning seeking an amendment to the *Albury Local Environmental Plan 2010* so as to include Clause 4.2AA into Part 4 of this Plan as it relates to exceptions to minimum lot sizes for certain rural subdivisions and request that a Gateway Determination be issued (with no public exhibition period), including the delegation of Plan making powers, so as to enable the public exhibition of the Planning Proposal (if required) pursuant to the *Environmental Planning & Assessment Act 1979*; and
- b. Upon receipt of a Gateway Determination under Section 56 of the *Environmental Planning & Assessment Act 1979*, Council place the Planning Proposal on public exhibition (if required) pursuant to any requirements of the Gateway Determination and Section 57 of the *Environmental Planning & Assessment Act 1979*; and
- c. Following a Gateway Determination with no public exhibition, or alternatively should no objections be received during public exhibition, furnish a copy of this report and any other relevant information to the NSW Department of Planning and Environment and/or NSW Parliamentary Counsels Office, in accordance with the *Environmental Planning & Assessment Act 1979*, and request the Minister for Planning (or a delegate on their behalf) undertake the appropriate actions to secure the making of the amendment to the *Albury Local Environmental Plan 2010* that seeks to include Clause 4.2AA into Part 4 of this Plan as it relates to exceptions to minimum lot sizes for certain rural subdivisions.

- **Attachments**

1. NSW Department of Planning & Environment Model Clause 4.24AA Exceptions to minimum lot sizes for certain rural subdivisions.
2. Planning Proposal: Amendment to Albury Local Environmental Plan 2010 – Part 4 Principal Development Standards – Inclusion of Clause 4.2AA Exceptions to minimum lot sizes for certain rural subdivisions (May 2015).
3. Communications Plan.