
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

Prepared by
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PART 1 – OBJECTIVES OR INTENDED OUTCOMES

AlburyCity Council has resolved to prepare a Planning Proposal as per Section 55 of the *Environmental Planning & Assessment Act 1979* (EP&A Act). The proposal seeks an amendment to the *Albury Local Environmental Plan 2010* (ALEP 2010) so as to include NSW Department of Planning & Environment (NSW DPE) Model Clause 4.2AA: Exceptions to minimum lot sizes for certain rural subdivisions into Part 4 of this Plan, which will allow for the more flexible use of land within Albury's rural zones (subject to council consent).

For the purposes of this Planning Proposal, Albury's 'rural zones' include: RU1 Primary Production Zone, RU2 Rural Landscape Zone and the RU4 Primary Production Small Lots Zone.

PART 2 – EXPLANATION OF PROVISIONS

As per Part 4 – Principal Development Standards of ALEP 2010, it is proposed to insert Clause 4.2AA after Clause 4.2A of the LEP as follows:

Clause 4.2AA Exceptions to minimum lot sizes for certain rural subdivisions

- (1) The objective of this clause is to enable the subdivision of land in rural areas to create lots of an appropriate size to meet the needs of current permissible uses other than for the purpose of dwelling houses or dual occupancies.*
- (2) This clause applies to land in the following zones:*
 - (a) Zone RU1 Primary Production,*
 - (b) Zone RU2 Rural Landscape,*
 - (c) Zone RU4 Primary Production Small Lots.*
- (3) Land to which this clause applies may, with development consent, be subdivided to create a lot of a size that is less than the minimum size shown on the Lot Size Map in relation to that land, if the consent authority is satisfied that the use of the land after the subdivision will be the same use (other than a dwelling house or a dual occupancy) permitted under the existing development consent for the land.*
- (4) Development consent must not be granted for the subdivision of land to which this clause applies unless the consent authority is satisfied that:*
 - (a) the subdivision will not adversely affect the use of the surrounding land for agriculture, and*
 - (b) the subdivision is necessary for the ongoing operation of the permissible use, and*
 - (c) the subdivision will not increase rural land use conflict in the locality, and*
 - (d) the subdivision is appropriate having regard to the natural and physical constraints affecting the land.*

PART 3 – JUSTIFICATION

Section A - Need for the planning proposal.

1. Is the planning proposal a result of any strategic study or report?

The planning proposal is not the result of any strategic study or report and the amendment seeks to include Department of Planning & Environment Model Clause 4.2AA: Exceptions to minimum lot sizes for certain rural subdivisions into Part 4 of this Plan.

This request follows a number of recent enquiries received by Council for the establishment or creation of rural zoned properties (less than the minimum lot size) for uses other than for '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 non primary production purposes (other than a dwelling house or dual occupancy), which is permissible in the zone, is generally consistent with the objectives of these zones, whilst not departing from the intent of ALEP 2010.

It is noted that the subject Planning Proposal has been prepared following discussions and advice from NSW Department of Planning & Environment regional staff. The proposed clause is a model clause that has been adopted by a number of other regional and rural council's including: Greater Hume Shire, Walcha, Yass Valley, Upper Hunter and Tenterfield (see **Appendix B**).

Given the wide range of land uses permitted within Albury's rural zones and the restrictions created by the current minimum lot size provisions, AlburyCity has decided to adopt Department of Planning & Environment Model Clause 4.2AA: Exceptions to minimum lot sizes for certain rural subdivisions to allow for the more flexible use of land.

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

The justification and rationale behind the proposed change is therefore 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.

Table 1 overleaf provides a summary, although not exhaustive list of some of these non-agricultural uses that are currently permitted within Albury's rural zones:

Table 1: Permitted Development 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).

As a consequence, AlburyCity is now seeking to amend ALEP 2010 by including an additional clause to allow for exceptions to minimum lot size requirements for certain rural subdivisions subject to Council consent. The implications of not proceeding with this Planning Proposal could be extensive, as this may prevent the establishment of a number of new businesses from commencing/starting up in Albury, as well as restricting a number of existing non-agricultural and non-residential uses.

It is also relevant to note that ADCP 2010 contains objectives and provisions encouraging opportunities to expand the local employment base by providing for a wide range of business, industry and other related uses.

2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

AlburyCity is of the view that the current restriction on rural subdivisions for purposes other than for primary production is creating a restriction on the efficient development of land as currently permitted under the land use table of the relevant rural zones.

By amending ALEP 2010 by including clause 4.2AA, this will allow for the more flexible use of rural zoned land and will encourage a variety and diversity of uses within Albury's rural areas.

Section B - Relationship to strategic planning framework

3. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

The draft *Murray Regional Strategy* (yet to be adopted) is Council's relevant Regional Strategy as set out by the NSW DPE and includes as one of its main aims to:

- *Reinforce the role of Albury as the Region's major regional centre and the opportunities in taking advantage of its strategic location and emerging economic strengths...*

The Planning Proposal seeks to provide greater flexibility in the subdivision of rural zoned land, which supports a diversity of non residential and non-agricultural uses as currently permitted under the land use tables of these rural zones, which is consistent with the draft *Murray Regional Strategy*.

4. Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?

The *Albury 2030 Community Strategic Plan* is Council's local community strategic planning document. The *Albury 2030 Plan* includes the following strategic aims under the theme of 'a growing economy':

- *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*
- *Support and promote business and business opportunities across all sectors to continue to foster economic diversity.*

The proposed inclusion of NSW DPE model 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.

5. Is the planning proposal consistent with applicable state environmental planning policies?

The Planning Proposal is consistent, or where applicable, justifiably inconsistent with *State Environmental Planning Policies*, as set out in **Table 3** of Appendix A.

6. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

The Planning Proposal is consistent, or where applicable, justifiably inconsistent with Section 117(2) Ministerial Directions, as set out in **Table 4** of Appendix A.

Section C - Environmental, social and economic impact**7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?**

There is no change in land use zoning proposed under the subject Planning Proposal with all existing environmental zones to remain untouched.

It is noted that ALEP 2010 has received biodiversity certification under the *Threatened Species Conservation Act 1995* (TSC Act) from the NSW Office of Environment and Heritage. The primary effect of conferring certification under this Act is that any development in an 'area proposed for development' (inclusive of urban zoned land) that requires development consent under Parts 4 or 5 of the EP&A Act is taken to be development that is not likely to significantly affect threatened species, populations, ecological communities or their habitats. This is due to the fact that elsewhere across the city, land designated as 'natural areas' has been zoned E2 Environment Protection or E3 Environmental Management for the ongoing maintenance and improvement of this land.

Using the definitions as contained within the biodiversity certification report, rural lands are classified as 'other areas' and although not protected to the extent of natural areas, they are generally seen as areas that are not subject to the same development pressure, that is the case in 'areas proposed for development' (urban areas).

Although this report did assume that there would be no subdivision of land in rural lands less than 100ha in the RU1 Primary Production Zone and RU2 Rural Landscape Zone, or 40ha or 80ha in the RU4 Primary Production Small Lots Zone, which to an extent gave a level of protection, it was also acknowledged in this Report that 88% of 'other areas' have already been cleared. Accordingly future development permitted under the land use tables for these zones could be designed and located to avoid and minimise native vegetation.

The report also surmises that 'the extant vegetation in these areas [which is already highly fragmented] is not considered to be at significant risk of loss from development or, in the case of small patch sizes that could conceivably or potentially be lost, is not considered a significant loss to the biodiversity values of the area'.

Accordingly, no threatened species, populations or ecological communities or their habitats will be adversely affected as a result of this proposal.

8. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

The proposal seeks to permit the subdivision of land in rural areas less than the minimum lot size for non-agricultural purposes (other than for a dwelling house or dual occupancy), which as previously outlined in this report, are already highly fragmented in terms of extant vegetation, which will therefore not have any adverse environmental effects.

Notwithstanding, any future subdivision of rural land less than the minimum lot size, will be subject to a separate development application, which will require a more detailed investigation and assessment so as to manage/limit any likely environmental effects.

9. Has the planning proposal adequately addressed any social and economic effects?

The Planning Proposal has the potential to have an overall positive social and economic impact upon the wider Albury area as detailed below.

As outlined above, the proposal seeks to allow the subdivision of land within rural zones for non-agricultural purposes less than the minimum lot size as required under ALEP 2010 in response to a number of recent enquiries received by Council for the more flexible use of rural land.

It is noted that the subject proposal does not seek to change the land use permissibility's of the rural zones due to potential off-site or land use conflict issues, but rather seeks to accommodate and support a variety of uses already permitted within Albury's rural areas.

The overall benefits of including this exception to rural subdivisions clause is therefore seen as positive, 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, as well as the desire to maintain a diverse economic base.

It is acknowledged however that there could be some potential off-site impacts associated with subdividing land less than the minimum lot size within Albury's rural areas, namely the fragmentation of rural land and the potential land use conflicts such subdivisions and developments may create on either existing agricultural pursuits or rural lifestyle developments.

Notwithstanding the above, given the types of non-agricultural uses permitted within the rural zones and the fact that any proposed use will be subject to a separate development assessment, the proposal is not considered to have any adverse social impacts.

As a consequence, AlburyCity is now seeking to include Clause 4.2AA within ALEP 2010 to allow for the more flexible use of rural land. The implications of not proceeding with this Planning Proposal could be extensive, as this may prevent the establishment of a number of new uses from commencing in Albury, which could have an adverse social and economic impact on the wider Albury area.

Section D - State and Commonwealth interests

10. Is there adequate public infrastructure for the planning proposal?

The planning proposal is seeking to allow the subdivision of land less than the minimum lot size in Albury's rural areas. The proposal does not change the zoning of the land or the land use types that are permitted within these zones, which accordingly will have an overall negligible impact on infrastructure and services.

11. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

No consultation has been carried out at this stage with any State and/or Commonwealth Public Authorities (with the exception of the NSW DPE) or service providers; however, any consultation will occur in accordance with the Gateway Determination.

It is expected that the only government agencies that may have an interest in the proposal would be the NSW Department of Primary Industries from a rural lands perspective and the NSW Office of Environment and Heritage from an environmental and biodiversity certification perspective.

AlburyCity believes however that the proposal will have a low impact on both rural lands and the environment given the relatively low demand for this form of development, especially as it excludes both dwelling houses and dual occupancies.

The proposal is also not seen to significantly fragment rural lands or adversely impact existing operating agricultural pursuits as the proposal only supports existing permitted land uses, whilst the impacts on the environment (and previous biodiversity certification agreements) are also considered low given the highly fragmented nature of vegetation within Albury's rural areas (88%) as detailed above.

PART 4 – MAPPING

The proposal does not seek a change in LEP mapping as it only seeks to incorporate Clause 4.2AA within Part 4 of ALEP 2010, as it relates to exceptions to minimum lot sizes for certain rural subdivisions.

Notwithstanding, **Appendix B** of this report contains a city wide land zoning map, showing all areas zoned RU1 Primary Production, RU2 Rural Landscape and RU4 Primary Production Small Lots for information purposes.

PART 5 – COMMUNITY CONSULTATION

Due to the minor nature of the planning proposal and the fact it is a model clause that does not affect the permissibility's for rural zoned land or reduce the amount of rural zoned land under ALEP 2010, AlburyCity requests that a Gateway Determination be issued with no public exhibition period.

This is generally consistent with s.73A(1)(c) of the *Environmental Planning & Assessment Act 1979* as it relates to a matter that will not have any significant adverse impact on the environment or adjoining land for the reasons outlined in this proposal. It is reiterated that this is a NSW DPE Model Clause, which has been adopted by a number of other NSW Council's and the likely impacts of the development are considered low.

Alternatively, should the Minister consider that the planning proposal requires public exhibition, Council proposes that the planning proposal be exhibited in accordance with the requirements of section 57 of the *Environmental Planning & Assessment Act 1979* and the NSW Department of Planning's: *A guide to preparing local environmental plans* (April 2013).

If public exhibition is required, AlburyCity considers the planning proposal to be a 'low impact proposal' and would seek a public exhibition period for a minimum of 14 days, due to the relatively minor nature of the proposal and the fact that the proposal does not change the zoning or permitted land uses of the existing rural zones, whilst also not having an adverse impact on services and infrastructure. Written notification of the community consultation will be provided in a local newspaper and on Councils' website. In addition to this, any affected landowner/s will be notified in writing.

The written notice will contain:

- A brief description of the intended outcomes of the planning proposal;
- An indication of the land which is affected by the proposal;
- Information on where and when the planning proposal can be inspected;
- The name and address of Council for the receipt of submissions;
- The closing date for submissions; and
- Whether the Minister has chosen to delegate Plan Making powers to Council.

During the public exhibition period the following documents will be placed on public exhibition:

- The Planning Proposal;
- The Gateway determination;
- Relevant council reports.

PART 6 – PROJECT TIMELINE

Table 2 provides a project timeline for the proposed amendment to ALEP 2010. This table assumes a need to publicly exhibition the planning proposal, however it is noted that these timeframes will be shorter if the NSW DPE considers that no formal public exhibition is required as outlined in Part 5 above.

Table 2 – Project Timeline

No.	Description of Tasks	Task Commencement	Task Completion
1.	Gateway Determination Anticipated Gateway Determination (including any delegated authority)	Late June 2015	Early July 2015
2.	Public Exhibition (if required) Agency and community consultation to be undertaken as part of the formal public exhibition of the Planning Proposal in accordance with any conditions of the Gateway Determination (only if required).	Early July 2015	Late July 2015
3.	Consider Submissions & Document Finalisation (only if submissions received) Post public exhibition (if required), AlburyCity officers to consider, respond and report on submissions received and issues raised to Council (if any) and make any relevant changes to the Planning Proposal.	Late July 2015	August 2015
4.	Submission to the Department and/or Parliamentary Counsel RPA to forward Planning Proposal to the department and/or Parliamentary Counsel (if delegated) for finalisation following public exhibition (including any changes made)(if required).	Late August 2015	Early September 2015
5.	Notification Anticipated date LEP will be notified.	September 2015	September 2015

APPENDIX A

Table 3 – Consideration of State Environmental Planning Policies

No.	SEPP Title	Applicable to Planning Proposal	Consistency
1	State Environmental Planning Policy – Development Standards	No, does not apply to land in the Albury LGA since gazettal of ALEP 2010	N/A
14	State Environmental Planning Policy – Coastal Wetlands	No, does not apply to the Albury LGA	N/A
15	State Environmental Planning Policy – Rural Landsharing Communities	No, does not apply to the Albury LGA	N/A
19	State Environmental Planning Policy – Bushland in Urban Areas	No, does not apply to the Albury LGA	N/A
21	State Environmental Planning Policy – Caravan Parks	Not applicable	N/A
26	State Environmental Planning Policy – Littoral Rainforests	No, does not apply to the Albury LGA	N/A
29	State Environmental Planning Policy – Western Sydney Recreation Area	No, does not apply to the Albury LGA	N/A
30	State Environmental Planning Policy – Intensive Agriculture	Not applicable	Although the proposal does relate to rural zoned land, where Intensive agriculture is permitted with consent in the RU1 Primary Production Zone, the subject Planning Proposal does not change existing land use permissibility's and only seeks to permit the subdivision of land for purposes other than primary production, which therefore does not affect compliance or consistency with this SEPP
32	State Environmental Planning Policy – Urban Consolidation (Redevelopment of Urban Land)	Not applicable	N/A

No.	SEPP Title	Applicable to Planning Proposal	Consistency
33	State Environmental Planning Policy – Hazardous & Offensive Industry	Not applicable	N/A
36	State Environmental Planning Policy – Manufactured Home Estate	Not applicable	N/A
39	State Environmental Planning Policy – Spit Island Bird Habitat	No, does not apply to the Albury LGA	N/A
44	State Environmental Planning Policy – Koala Habitat Protection	Not applicable	N/A
47	State Environmental Planning Policy – Moore Park Showground	No, does not apply to the Albury LGA	N/A
50	State Environmental Planning Policy – Canal Estate Development	Not applicable	N/A
52	State Environmental Planning Policy – Farm Dams and Other Works in Land and Water Management Plan Areas	No, does not apply to the Albury LGA	N/A
55	State Environmental Planning Policy – Remediation of Land	Not applicable	N/A
59	State Environmental Planning Policy – Central Western Sydney Regional Open Space and Residential	No, does not apply to the Albury LGA	N/A
62	State Environmental Planning Policy – Sustainable Aquaculture	Not applicable	N/A
64	State Environmental Planning Policy – Advertising & Signage	Not applicable	N/A

No.	SEPP Title	Applicable to Planning Proposal	Consistency
65	State Environmental Planning Policy – Design Quality of Residential Flat Development	Not applicable	N/A
70	State Environmental Planning Policy – Affordable Housing (Revised Schemes)	No, does not apply to the Albury LGA	N/A
71	State Environmental Planning Policy – Coastal Protection	No, does not apply to the Albury LGA	N/A
	State Environmental Planning Policy (Affordable Rental Housing) 2009	Not applicable	N/A
	State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	Not applicable	N/A
	State Environmental Planning Policy (Exempt & Complying Development Codes) 2008	Not applicable	N/A
	State Environmental Planning Policy (Housing for Seniors & People with a Disability) 2004	Not applicable	N/A
	State Environmental Planning Policy (Infrastructure) 2007	Not applicable	N/A
	State Environmental Planning Policy (Kosciuszko National Park – Alpine Resorts) 2007	No, does not apply to the Albury LGA	N/A
	State Environmental Planning Policy (Kurnell Peninsula) 1989	No, does not apply to the Albury LGA	N/A

No.	SEPP Title	Applicable to Planning Proposal	Consistency
	State Environmental Planning Policy (Major Development) 2005	Not applicable	N/A
	State Environmental Planning Policy (Mining, Petroleum Production & Extractive Industries) 2007	Not applicable	N/A
	State Environmental Planning Policy (Miscellaneous Consent Provisions) 2007	Not applicable	N/A
	State Environmental Planning Policy (Penrith Lakes Scheme) 1989	No, does not apply to the Albury LGA	N/A
	State Environmental Planning Policy (Rural Lands) 2008	Applicable as the planning proposal relates to land within a rural zone.	The Planning Proposal does not derogate from the aims, rural planning and subdivision principles to assist the management, development and protection of rural lands, development assessment and other provisions as provided in the SEPP. The proposal is generally consistent with the aims of this policy as it: • Provides greater flexibility in the use of rural land, which will facilitate the orderly and economic use and development of this land for rural and other related purposes, which are already currently permitted under the land use tables of the relevant rural zones; • Is generally consistent with the Rural Planning Principles and the Rural Subdivision Principles of this SEPP (as detailed further below) and will not adversely affect the operation of currently productive rural land, as well as promoting the social, economic and environmental value of Albury through a more flexible approach to development in rural areas;

No.	SEPP Title	Applicable to Planning Proposal	Consistency
	State Environmental Planning Policy (Rural Lands) 2008 Cont.		- Will not create widespread land use conflicts within rural areas, given the expected low level of demand to utilise this clause. It is reiterated 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 (excluding dwelling houses and dual occupancies). Whilst individual development proposals may have the potential to create land use conflicts, these can be assessed and resolved at the time of assessing any development application, given the particulars of the development and its surrounds; - Does not relate to State Significant agricultural land; and - Does not seek to enable opportunities for the creation of concessional lots as part of a rural subdivision as the model clause excludes both dwelling houses and dual occupancies. An assessment of the Planning Proposal against the Rural Planning Principles of this SEPP was also undertaken and is seen as consistent as follows: - The proposal will not adversely affect the viability of current or future productive activities in rural areas, given the already low productivity of agricultural land in Albury as outlined in the <i>Draft Albury Rural Lands Strategy for Table Top and Splitters Creek</i>;

No.	SEPP Title	Applicable to Planning Proposal	Consistency
	State Environmental Planning Policy (Rural Lands) 2008 Cont.		• The proposal does not relate to land classified as State Significant agricultural land and balances the social, economic and environmental interests of the community by allowing for the more flexible use of rural land; • There will be no adverse impacts on existing environmental zoned lands, threatened species or native vegetation as these areas are protected through environmental zonings and controls that will not change as a result of this proposal; & • The subject proposal does not seek to create undersized lots for rural lifestyle or rural residential purposes that would compromise existing agricultural pursuits and adversely impact upon existing services and infrastructure. Similarly, an assessment of the proposal against the Rural Subdivision Principles of this SEPP was undertaken, with the proposal generally consistent as follows: • The proposal does not seek to create any opportunities for rural lifestyle development and dwellings; and • As previously discussed, issues regarding the fragmentation of rural land, and potential land use conflicts between residential land uses and other rural land uses are generally seen as satisfactory. Accordingly, 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 this zone. As demonstrated above, the development is generally consistent with the aims and objectives of this SEPP.

No.	SEPP Title	Applicable to Planning Proposal	Consistency
	State Environmental Planning Policy (SEPP 53 Transitional Provisions) 2011	Not applicable	N/A
	State Environmental Planning Policy (State and Regional Development) 2011	Not applicable	N/A
	State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011	Not applicable	N/A
	State Environmental Planning Policy (Sydney Region Growth Centres) 2006	Not applicable	N/A
	State Environmental Planning Policy (Three Ports) 2013	No, does not apply to the Albury LGA	N/A
	State Environmental Planning Policy (Urban Renewal) 2010	Not applicable	N/A
	State Environmental Planning Policy (Western Sydney Employment Area) 2009	No, does not apply to the Albury LGA	N/A
	State Environmental Planning Policy (Western Sydney Parklands) 2009	No, does not apply to the Albury LGA	N/A
	Murray Regional Environmental Plan No. 2 – Riverine Land (Deemed SEPP)	Yes applies to the Albury LGA	Consistent, as the Planning Proposal does not derogate from the aims, objectives, development consent, general and specific planning principles and consultation requirements as provided in the REP. Although the subject Planning Proposal does seek to permit subdivision of rural land (including certain rural zones classified as Riverine Land) less than the minimum lot size for non-agricultural

No.	SEPP Title	Applicable to Planning Proposal	Consistency
	Murray Regional Environmental Plan No. 2 – Riverine Land (Deemed SEPP) Cont.		uses, this does not remove the normal Murray REP general and specific planning principles and consultation requirements as provided in the REP. The proposal also maintains normal assessment, referral and concurrence requirements for development of land in flood prone areas and likewise, Clauses 7.2 – Water and 7.4 – Flood Planning of ALEP 2010 will also appropriately control development that is subject to flooding or that will have a potentially deleterious effect upon riparian areas.

Table 4 – Consideration of Section 117(2) Ministerial Directions

No.	Direction Title	Applicable to Planning Proposal	Consistency
1. Employment and Resources			
1.1	Business & Industrial Zones	Not applicable	N/A
1.2	Rural Zones	Yes, as the planning proposal will affect land within a rural zone	Although the proposal seeks to create an additional provision that will increase the permissible density of land within a rural zone, following a review of this Direction, the proposal is justifiably inconsistent as follows: Direction 1.2 states, amongst other things that a draft Planning Proposal may be inconsistent with the terms of this Direction only if Council can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the draft LEP that are inconsistent are: • In accordance with the relevant Regional Strategy or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this Direction, or • Is of minor significance. It is acknowledged that the Murray Region does not currently have a gazetted Regional Strategy, however it is noted that the proposed model clause outlined in this proposal was recommended to AlburyCity following discussions with relevant NSW DPE regional staff. This is the same clause adopted by a number of other regional and rural council's including: Greater Hume, Walcha, Yass Valley, Upper Hunter and Tenterfield.

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No.	Direction Title	Applicable to Planning Proposal	Consistency
1.2	Rural Zones Cont.		Although the proposal does seek to allow the subdivision of rural land less than the minimum lot size, which in turn could create a greater density of land, the overall impacts of this clause are considered relatively minor given the small number of non-agricultural land uses currently permitted within these zones, the low levels of demand for this form of development and the already fragmented and unviable nature of agricultural land within Albury as detailed within the <i>Draft Rural Lands Strategy for Table Top and Splitters Creek</i> .
1.3	Mining, Petroleum Production & Extractive Industries	Not applicable	N/A
1.4	Oyster Aquaculture	Not applicable	N/A
1.5	Rural Lands	Yes, as the planning proposal will affect land within a rural zone	Justifiably inconsistent, despite changing the existing minimum lot sizes of land within a rural zone (as it relates to creating a lot for non-agricultural purposes) for the reasons outlined as follows: - As detailed above, the Planning Proposal is generally consistent with the Rural Planning Principles and Rural Subdivision Principles as contained within <i>State Environmental Planning Policy (Rural Lands) 2008</i>; - The subject proposal is consistent with the objectives of this Direction as it will not adversely affect the operation of currently productive rural land, as well as promoting the social, economic and environmental value of Albury through a more flexible approach to development in rural areas for rural and other related purposes, which are already currently permitted under the land use tables of relevant rural zones;

No.	Direction Title	Applicable to Planning Proposal	Consistency
1.5	Rural Lands Cont.		• The proposal will not adversely affect the viability of current or future productive activities in rural areas, especially given the already low productivity of agricultural land in Albury as outlined in the <i>Draft Albury Rural Lands Strategy for Table Top and Splitters Creek</i>; • The subject proposal does not seek to create undersized lots for rural lifestyle or rural residential purposes that would compromise existing agricultural pursuits and adversely impact upon existing services and infrastructure. It is noted that the proposed model clause was recommended to AlburyCity following discussions with relevant NSW DPE regional staff. This is the same clause adopted by a number of other regional and rural council's including: Greater Hume, Walcha, Yass Valley, Upper Hunter and Tenterfield, which allows for the more flexible use of rural land, whilst ensuring that rural lands remain protected. Although the proposal does seek to allow the subdivision of rural land less than the minimum lot size, which in turn could create a greater density of land, the overall impacts of this clause are considered relatively minor given the small number of non-agricultural land uses currently permitted within these zones, the low levels of demand for this form of development and the already fragmented and unviable nature of agricultural land within Albury as detailed within the <i>Draft Rural Lands Strategy for Table Top and Splitters Creek</i>.

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No.	Direction Title	Applicable to Planning Proposal	Consistency
2. Environment and Heritage			
2.1	Environmental Protection Zones	Not applicable as the Proposal does not relate to land zoned for environment protection purposes	N/A
2.2	Coastal Protection	No (does not apply to land in Albury LGA)	N/A
2.3	Heritage Conservation	Not applicable	N/A
2.4	Recreation Vehicle Areas	Not applicable	N/A
3. Housing, Infrastructure and Urban Development			
3.1	Residential Zones	Not applicable	N/A
3.2	Caravan Parks & Manufactured Home Estates	Not applicable	N/A
3.3	Home Occupations	Not applicable	N/A
3.4	Integrating Land Use and Transport	Not applicable	N/A
3.5	Development Near Licensed Aerodromes	Yes because the planning proposal creates a provision relating to land in the vicinity to a licensed aerodrome	Consistent, because the planning proposal will not derogate from the requirements of this Direction and only seeks to permit rural subdivision less than the minimum lot size for non-agricultural uses as it relates to rural land in proximity to the Albury airport. It is further noted that any additional impacts on this airport will be negligible given that the planning proposal does not permit any additional land uses within rural zones and is located outside of the Obstacle Limitation Surface, as well as the Albury Take-off and Approach Splay of the airport.
3.6	Shooting Ranges	Not applicable	N/A

AlburyCity
AMENDMENT TO ALBURY LOCAL ENVIRONMENTAL PLAN 2010

No.	Direction Title	Applicable to Planning Proposal	Consistency
4. Hazard and Risk			
4.1	Acid Sulphate Soils	No (does not apply to land in the Albury LGA)	N/A
4.2	Mine Subsidence & Unstable Land	No (does not apply to land in the Albury LGA)	N/A
4.3	Flood Prone Land	Yes because the planning proposal creates a provision relating to land classified as flood prone	The Planning Proposal is not inconsistent with the objectives of this Direction, being to ensure development of flood prone land is consistent with the NSW <i>Floodplain Development Manual 2005</i>. It is noted that this Direction only applies, due to the fact that several of Albury's rural zones are located within a flood prone area. It is anticipated that the impacts of flooding on owners and occupiers of flood prone land will be minimal given the size of the lots involved. It is reiterated that the proposal only seeks to permit the subdivision of land less than the minimum lot size for non-agricultural purposes and does not seek to introduce any new or additional uses within these rural zones. The proposal also maintains normal assessment, referral and concurrence requirements for development of land in flood prone areas and likewise, Clauses 7.2 – Water and 7.4 – Flood Planning of ALEP 2010 will also appropriately control development that is subject to flooding or that will have a potentially deleterious effect upon riparian areas.
4.4	Planning for Bushfire Protection	Yes because the planning proposal affects land classified as bushfire prone land	The Planning Proposal is not inconsistent with the objectives of this Direction, being to protect life, property and the environment from bush fire hazards by discouraging the establishment of incompatible land uses in bushfire prone areas.

AlburyCity
AMENDMENT TO ALBURY LOCAL ENVIRONMENTAL PLAN 2010

No.	Direction Title	Applicable to Planning Proposal	Consistency
4.4	Planning for Bushfire Protection Cont.		It is noted that this Direction only applies, due to the fact that several of Albury's rural zones are located within a bushfire prone area. Furthermore, the proposal also maintains normal assessment, referral and concurrence (if required) requirements for development of land in bushfire prone areas, whilst still requiring compliance with the aims, objectives and controls of the RFS Guideline: <i>Planning for Bushfire Protection 2006</i> and the <i>Rural Fires Act 1997</i>.
5. Regional Planning			
5.1	Implementation of Regional Strategies	No (there is no gazetted regional strategy applicable to the AlburyCity LGA)	N/A
5.2	Sydney Drinking Water Catchment	No (does not apply to the AlburyCity LGA)	N/A
5.3	Farmland of State & Regional Significance on the NSW Far North Coast	No (does not apply to the AlburyCity LGA)	N/A
5.4	Commercial and Retail Development along the Pacific Highway, North Coast	No (does not apply to the AlburyCity LGA)	N/A
5.5	Development in the Vicinity of Ellalong, Paxton and Millfield (Cessnock LGA) (Revoked 18 June 2010)	No (does not apply to the AlburyCity LGA)	N/A
5.6	Sydney to Canberra Corridor (Revoked 10 July 2008. See amended Direction 5.1)	No (does not apply to the AlburyCity LGA)	N/A

AlburyCity
AMENDMENT TO ALBURY LOCAL ENVIRONMENTAL PLAN 2010

No.	Direction Title	Applicable to Planning Proposal	Consistency
5.7	Central Coast (Revoked 10 July 2008. See amended Direction 5.1)	No (does not apply to the AlburyCity LGA)	N/A
5.8	Second Sydney Airport: Badgerys Creek	No (does not apply to the AlburyCity LGA)	N/A
5.9	North West Rail Link Corridor Strategy	No (does not apply to the AlburyCity LGA)	N/A
6. Local Plan Making			
6.1	Approval and Referral Requirements	Yes	Consistent, as the planning proposal is not proposing to add any provisions which require referral of development applications to the Minister.
6.2	Reserving Land for Public Purposes	Not applicable as the proposal does not relate to public land	N/A
6.3	Site Specific Provisions	Not applicable	N/A
7. Metropolitan Planning			
7.1	Implementation of Metropolitan Strategy	Not applicable	N/A

APPENDIX B

Examples of other Council Rural Subdivision Clauses

Greater Hume Local Environmental Plan 2012

Current version for 15 August 2014 to date (accessed 18 May 2015 at 12:10)

[Part 4](#) » [Clause 4.2AA](#)

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4.2AA Exceptions to minimum lot sizes for certain rural subdivisions

- (1) The objective of this clause is to enable the subdivision of land in rural areas to create lots of an appropriate size to meet the needs of current permissible uses other than for the purpose of dwelling houses or dual occupancies.
- (2) This clause applies to land in Zone RU1 Primary Production.
- (3) Land to which this clause applies may, with development consent, be subdivided to create a lot of a size that is less than the minimum size shown on the Lot Size Map in relation to that land, if the consent authority is satisfied that the use of the land after the subdivision will be the same use (other than a dwelling house or a dual occupancy) permitted under the existing development consent for the land.
- (4) Development consent must not be granted for the subdivision of land to which this clause applies unless the consent authority is satisfied that:
 - (a) the subdivision will not adversely affect the use of the surrounding land for agriculture, and
 - (b) the subdivision is necessary for the ongoing operation of the permissible use, and
 - (c) the subdivision will not increase rural land use conflict in the locality, and
 - (d) the subdivision is appropriate having regard to the natural and physical constraints affecting the land.

Tenterfield Local Environmental Plan 2013

Current version for 2 April 2015 to date (accessed 18 May 2015 at 12:50)

[Part 4](#) ♦ [Clause 4.2B](#)

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4.2B Exceptions to minimum lot sizes for certain rural subdivisions

- (1) The objective of this clause is to enable the subdivision of land in rural areas to create lots of an appropriate size to meet the needs of current permissible uses other than for the purpose of dwelling houses or dual occupancies.
- (2) Land in Zone RU1 Primary Production may, with development consent, be subdivided to create a lot of a size that is less than the minimum size shown on the [Lot Size Map](#) in relation to that land, where the consent authority is satisfied that the use of the land after the subdivision will be the same use (other than a dwelling house or dual occupancy) permitted under the existing development consent for the land.
- (3) Development consent must not be granted for the subdivision of land to which this clause applies unless the consent authority is satisfied that:
 - (a) the subdivision will not adversely affect the use of the surrounding land for agriculture, and
 - (b) the subdivision is necessary for the ongoing operation of the permissible use, and
 - (c) the subdivision will not increase rural land use conflict in the locality, and
 - (d) the subdivision is appropriate having regard to the natural and physical constraints affecting the land.

Upper Hunter Local Environmental Plan 2013

Current version for 15 August 2014 to date (accessed 18 May 2015 at 12:53)

[Part 4](#) » [Clause 4.2A](#)

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4.2A Exceptions to minimum subdivision lot sizes for certain rural subdivisions

- (1) The objective of this clause is to enable the subdivision of land in rural areas to create lots of an appropriate size to meet the needs of current permissible uses other than for the purpose of dwelling houses or dual occupancies.
- (2) This clause applies to the following rural zones:
 - (a) Zone RU1 Primary Production,
 - (b) Zone RU4 Primary Production Small Lots.
- (3) Land to which this clause applies may, with development consent, be subdivided to create a lot of a size that is less than the minimum size shown on the Lot Size Map in relation to that land, if the consent authority is satisfied that the use of the land after the subdivision will be the same use (other than a dwelling house or a dual occupancy) permitted under the existing development consent for the land.
- (4) Development consent must not be granted for the subdivision of land to which this clause applies unless the consent authority is satisfied that:
 - (a) the subdivision will not adversely affect the use of the surrounding land for agriculture, and
 - (b) the subdivision is necessary for the ongoing operation of the permissible use, and
 - (c) the subdivision will not cause or increase rural land uses conflict in the locality, and
 - (d) the subdivision is appropriate having regard to the natural and physical constraints affecting the land.

Walcha Local Environmental Plan 2012

Current version for 15 August 2014 to date (accessed 18 May 2015 at 12:55)

[Part 4](#) ➤ [Clause 4.2B](#)

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4.2B Exceptions to minimum lot sizes for certain rural subdivisions

- (1) The objective of this clause is to enable the subdivision of land in rural areas to create lots of an appropriate size to meet the needs of permissible uses other than for the purpose of dwelling houses or dual occupancies.
- (2) This clause applies to land in the following zones:
 - (a) Zone RU1 Primary Production,
 - (b) Zone RU4 Primary Production Small Lots.
- (3) Land to which this clause applies may, with development consent, be subdivided to create a lot of a size that is less than the minimum size shown on the Lot Size Map in relation to that land, if the consent authority is satisfied that the use of the land after the subdivision will be the same use (other than for the purpose of a dwelling house or a dual occupancy) permitted under the existing development consent for the land.
- (4) Development consent must not be granted for the subdivision of land to which this clause applies unless the consent authority is satisfied that:
 - (a) the subdivision will not adversely affect the use of the surrounding land for agriculture, and
 - (b) the subdivision is necessary for the ongoing operation of the permissible use, and
 - (c) the subdivision will not cause a conflict between a use of the land subdivided and the use of the surrounding land in the locality, and
 - (d) the subdivision is appropriate having regard to the natural and physical constraints affecting the land.

Yass Valley Local Environmental Plan 2013

Current version for 15 August 2014 to date (accessed 18 May 2015 at 12:58)

[Part 4](#) ➤ [Clause 4.2A](#)

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4.2A Exceptions to minimum lot sizes for certain rural subdivisions

- (1) The objective of this clause is to enable the subdivision of land in rural areas to create lots of an appropriate size to meet the needs of current permissible uses other than for the purpose of dwelling houses or dual occupancies.
- (2) This clause applies to land in the following zones:
 - (a) Zone RU1 Primary Production,
 - (b) Zone RU2 Rural Landscape,
 - (c) Zone RU4 Primary Production Small Lots.
- (3) Land to which this clause applies may, with development consent, be subdivided to create a lot of a size that is less than the minimum size shown on the Lot Size Map in relation to that land if the consent authority is satisfied that the use of the land after the subdivision will be the same use (other than a dwelling house or a dual occupancy) permitted under an existing development consent for the land.
- (4) Development consent must not be granted for the subdivision of land to which this clause applies unless the consent authority is satisfied that:
 - (a) the subdivision will not adversely affect the use of the surrounding land for agriculture, and
 - (b) the subdivision is necessary for the ongoing operation of the permissible use, and
 - (c) the subdivision will not increase rural land use conflict in the locality, and
 - (d) the subdivision is appropriate having regard to the natural and physical constraints affecting the land.

Albury Local Environmental Plan 2010 – Land Zoning Map

