



Planning Proposal

Amendment to Albury Local Environmental Plan 2010

Part 4 Principal Development Standards

Inclusion of Clause 4.1B Minimum subdivision lot sizes for certain split zones

Prepared by
AlburyCity Council

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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 *Clause 4.1B: Minimum subdivision lot sizes for certain split zones* into Part 4 of this Plan, to allow for the subdivision of land with a dual/split zone (subject to council consent).

This Planning Proposal applies to all land within the Albury Local Government Area (LGA) with a split or dual zone.

PART 2 – EXPLANATION OF PROVISIONS

As per Part 4 – Principal Development Standards of ALEP 2010, it is proposed to insert Clause 4.1B after Clause 4.1A of the LEP as follows:

4.1B Minimum subdivision lot sizes for certain split zones

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

- (a) to provide for the subdivision of lots that are within more than one zone but cannot be subdivided under clause 4.1,*
- (b) to ensure that the subdivision occurs in a manner that promotes suitable land use and development.*

(2) *This clause applies to each lot (an **original lot**) that contains:*

- (a) land in a business, industrial, recreation, residential, or special purpose zone, or Zone RU1 Primary Production, Zone RU4 Primary Production Small Lots or Zone RU5 Village and*
- (b) land in Zone RU2 Rural Landscape, E2 Environmental Conservation, E3 Environmental Management, E4 Environmental Living or W2 Recreational Waterways.*

(3) *Despite clause 4.1, development consent may be granted to subdivide an original lot to create other lots (the **resulting lots**) if:*

- (a) one of the resulting lots will contain:*
 - (i) land in a business, industrial, recreation, residential, or special purpose zone, or Zone RU1 Primary Production, Zone RU4 Primary Production Small Lots or Zone RU5 Village that has an area that is not less than the minimum size shown on the Lot Size Map in relation to that land, and*
 - (ii) all of the land in Zone RU2 Rural Landscape, E2 Environmental Conservation, E3 Environmental Management, E4 Environmental Living or W2 Recreational Waterways that was in the original lot, and*
- (b) all other resulting lots will contain land that has an area that is not less than the minimum size shown on the Lot Size Map in relation to that 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 local *Clause 4.1B: Minimum subdivision lot sizes for certain split zones* into Part 4 of this Plan.

Historically, the zoning of land within Albury has been aligned with the boundaries of an individual property rather than based on the particular characteristics or environmental features of the land.

At the time of preparing ALEP 2010 however, the zoning of all land across the Albury Local Government Area (LGA) was reviewed based on the recommendations contained within the *Albury Land Use Strategy 2007* (ALUS 2007) and *Albury Local Environmental Study 2008* (ALES 2008), which reflected the environmental characteristics and attributes of land rather than using a notional property boundary to differentiate between different zones.

Following this review, a range of new land use zones and accompanying minimum subdivision lot sizes were introduced across the city in accordance with the NSW Department of Planning's *Standard Instrument Local Environmental Plan*. As a result, a large number of properties now contain dual or multiple zones in recognition of the physical or environmentally sensitive characteristics of the land.

The most common occurrence of this situation is where the majority of a property is zoned residential, but a small portion of the site is zoned either E2 Environmental Conservation or E3 Environmental Management, in recognition of the environmental attributes of that portion of the site. Similarly, there are a number of properties that are part zoned rural, but also contain a portion of land zoned W2 Recreational Waterways where they adjoin Lake Hume and are below the high water mark (see a copy of the Land Zoning Map in **Appendix B**).

Since the introduction of ALEP 2010, it was AlburyCity's understanding that where a property contained multiple or dual/split zones, subdivision could be undertaken on this land, where it achieved the minimum lot size requirements of ALEP 2010 and where it did not further fragment existing environmental or rural zoned land already below the minimum lot size requirements of ALEP 2010.

Consideration of a recent Development Application however identified that there is some ambiguity around this interpretation. Whilst these have not been tested in the Land and Environment Court there is a level of uncertainty that warranted further examination. The issue relates to proposed subdivisions where the proposed lots do not meet the minimum lot size requirements of all zones applying to the site as contained within ALEP 2010. The emphasis is on all zones rather than the primary use, which has typically been residential or industrial.

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Further advice received from relevant NSW Department of Planning & Environment (NSW DPE) regional staff has indicated that the existing ALEP 2010 provisions create doubt in these circumstances and Council should resolve this prior to receiving or determining any Development Applications for the subdivision of land where it does not comply with the minimum lot size requirements of ALEP 2010 in relation to all zones applying to a site. This is particularly an issue given Albury's rural and environmental zones generally have a minimum subdivision lot size requirement of 100ha, which would otherwise prevent the further subdivision of land with a split zone where any one of these zones apply.

The implications and consequences of this are significant, as it prevents AlburyCity from being able to receive or determine any Development Applications for the subdivision of land that contains dual/split zoning, in the absence of an amendment to ALEP 2010 being undertaken. As a consequence, a number of current Development Applications for large residential subdivisions have been withdrawn pending consideration of this amendment to ALEP 2010.

It is noted that at the time of preparing ALEP 2010, there were no directions, guidelines or model local clauses for Council to use to control or guide how land should be developed where it had a dual/split zone. Notwithstanding, AlburyCity was of the understanding that where a property contained multiple or dual/split zones, subdivision could be undertaken on this land, where it achieved the minimum lot size requirements of ALEP 2010 and where it did not further fragment existing rural, environment protection or waterway zoned land already below the minimum lot size requirements of ALEP 2010.

It is only in response to recent legal advice received by Council, as well as recent discussions with relevant NSW DPE regional staff, that AlburyCity became aware that there was ambiguity in regards to the subdivision of land with a dual zone within Albury where it did not meet the minimum lot size requirements of all zones applying to a particular development site.

Accordingly, the subject Planning Proposal has been prepared following discussions and advice from NSW DPE regional staff and is a model clause that has been adopted by a large number of other rural, regional and metropolitan council's as outlined in *Table 1*:

Table 1: Example Councils

Council Name		
• Armidale; • Byron Shire • Carrathool; • Cessnock; • Coffs Harbour; • Cooma-Monaro; • Cowra; • Deniliquin; • Dungog; • Glen Innes Severn • Hornsby;	• Inverell; • Kempsey; • Kyogle; • Lismore; • Liverpool Plains; • Maitland; • Murray; • Narrabri; • Nambucca; • Newcastle; • Port Macquarie-Hastings;	• Port Stephens; • Tamworth; • Tweed; • Upper Hunter; • Uralla; • Urana; • Wingecarribee; • Wollongong.

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The proposal therefore seeks to amend ALEP 2010 by allowing for the subdivision of land with a dual/split zone within designated business, industrial, recreation, residential, rural (with the exception of the RU2 zone) or special purpose zones, whilst protecting certain rural (RU2 zoned), environment protection and waterway zoned land from further fragmentation below the minimum lot size.

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 the subdivision of dual/split zoned land is creating a severe constraint to the development of land, where it does not seek to further fragment certain rural, environment protection and waterway zoned land that is already below the minimum lot size requirements of ALEP 2010.

By amending ALEP 2010 by including clause 4.1B, this will allow for the subdivision of land with a dual/split zone, which is currently prohibited.

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 part of its aims to:

- *Protect and manage the sensitive riverine environment of the Region's major waterways (such as the Murray River) to safeguard the future health and wellbeing of one of Australia's most important natural catchments;*
- *Cater for a housing demand of 13,900 new dwellings by 2036 to accommodate the combined pressure of the forecast population increase, the needs of a significantly changing population and growing tourism demands for new dwellings;*
- *Ensure an adequate supply of employment land, particularly in Albury and other major towns to accommodate a projected 3,100 new jobs;*
- *Protect the rural landscape and natural environment by limiting urban sprawl, focusing new settlement in areas identified on local strategy maps and restricting unplanned new urban or rural residential settlement.*

The Planning Proposal is consistent with the aims of this draft Regional Strategy as it seeks to allow for the subdivision of land with a dual/split zone within designated business, industrial, recreation, residential, rural (with the exception of the RU2 zone) or special purpose zones, whilst protecting certain rural (RU2 zoned), environment protection and waterway zoned land from further fragmentation below the minimum lot size. In doing so, this will also protect sensitive environmental and rural lands, whilst also catering for the long term residential and employment growth of Albury.

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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 themes of 'a growing economy' and 'An Enhanced Natural Environment':

- *Support Albury's population growth – ensure policies facilitate sustainable growth and housing choice without compromising Albury's values;*
- *Progress development of AlburyCity Structure Plans and/or Master Plans:*
 - *Thurgoona/Wirlinga;*
 - *Splitters Creek;*
 - *Lake Hume and Table Top Villages;*
 - *Table Top.*
- *Review and monitor the Local Environmental Plan and the Development Control Plan with regard to outcomes within Albury 2030; and*
- *Albury Land Monitor (residential, commercial and industrial sectors) - which includes as a Target for 2016:*
 - *Maintain a diversity of options amongst all sectors and continue to meet demands for opportunities of land development; and*
 - *Achieve a minimum 10 years supply of undeveloped urban land (commercial, industrial and residential).*
- *Implement 'Albury our Future' – AlburyCity's Sustainability Strategy.*

The proposed inclusion of Clause 4.1B into ALEP 2010 is consistent with the above actions and targets, as it seeks to allow for the subdivision of land with a dual/split zone within designated business, industrial, recreation, residential, rural (with the exception of the RU2 zone) or special purpose zones, whilst protecting certain rural (RU2 zoned), environment protection and waterway zoned land from further fragmentation below the minimum lot size. This will ensure that Albury has an appropriate amount of zoned developed, as well as zoned undeveloped 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. The proposal also does not seek to introduce any new provisions or controls that would impact upon Albury's environmental lands, but rather clarify the conditions that must be satisfied when subdividing land with a dual/split zoning whilst protecting certain rural, environment protection or waterway zoned land from being further fragmented below the minimum lot size of ALEP 2010.

This is considered particularly important given AlburyCity's previous commitments and agreements with the NSW Office of Environment and Heritage (OEH), as part of the *Biodiversity Certification* of ALEP 2010 and the potential impacts that the further fragmentation of environmental zoned land may have upon these agreements, as well as, the impacts that such development may have upon the environmental sensitivity's of land, as a result of further fragmentation and ownership/management across multiple landowners.

Accordingly, the inclusion of the proposed model clause will not adversely affect threatened species, populations or ecological communities or their habitats and will in fact seek to protect this land 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 clarify the conditions that must be satisfied when subdividing land with a dual/split zoning whilst protecting certain rural, environment protection or waterway zoned land from being further fragmented below the minimum lot size of ALEP 2010.

It is noted that since the introduction of ALEP 2010, it was AlburyCity's understanding that where a property contained multiple or dual/split zones, subdivision could be undertaken on this land, where it achieved the minimum lot size requirements of ALEP 2010 and where it did not further fragment existing environmental or rural zoned land already below the minimum lot size requirements of ALEP 2010, so as to maintain this land in the one ownership for its ongoing management and protection.

This was particularly the case where the majority of a property is zoned residential, but a small portion of the site is zoned either E2 Environmental Conservation or E3 Environmental Management, in recognition of the environmental attributes of that portion of the site. It is only in response to recent legal advice received by Council, as well as recent discussions with relevant NSW DPE regional staff, that AlburyCity became aware that there was ambiguity in regards to the subdivision of land with a dual zone where it did not meet the minimum lot size requirements of all zones applying to a particular development site.

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Accordingly, AlburyCity is now seeking to amend ALEP 2010 to allow for the subdivision of dual/split zoned land only where existing environment protection zoned land is protected from further fragmentation, which will have an overall positive impact upon the environment, as well as being consistent with previous commitments and agreements with the NSW OEH as part of the *Biodiversity Certification* of ALEP 2010.

It is noted that the subject Planning Proposal does relate to land designated as both bushfire prone and flood prone and these have been assessed under the relevant s.117(2) Ministerial Directions as contained within **Table 4**.

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

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

As outlined above, the proposal seeks to amend ALEP 2010 to address a recently identified anomaly that prevents Council from receiving or determining any Development Applications for the subdivision of land with a dual/split zone, where the property does not meet the minimum lot size requirements of all zones applying to the particular development site. This is in the absence of an amendment to ALEP 2010.

The proposed amendment seeks to amend ALEP 2010 by including an additional model clause that clarifies the conditions that must be satisfied when subdividing land with a dual/split zoning whilst protecting certain rural, environment protection or waterway zoned land from being further fragmented below the minimum lot size of ALEP 2010 and is retained in the one ownership for its ongoing management and protection.

Whilst it is acknowledged that the subdivision of land below the minimum lot size could create issues of land fragmentation, land use conflicts and environmental concerns, given that the model clause only seeks to allow for the subdivision of land with a dual/split zone within designated business, industrial, recreation, residential, rural (with the exception of the RU2 zone) or special purpose zones, whilst protecting certain rural (RU2 zoned), environment protection and waterway zoned land from further fragmentation below the minimum lot size, the impacts of the proposal are considered minor.

The social and environmental impacts of the proposal have also been assessed and are considered satisfactory, as the inclusion of the draft model split zone clause protects existing rural, environment protection and waterway zoned land and does not compromise previous Biodiversity Certification agreements between AlburyCity and OEH nor fragment or adversely affect Albury's rural zoned land, consistent with the recommendations of the *draft Rural Lands Strategy for Table Top & Splitters Creek*.

At present the implications of not amending ALEP 2010 are significant due to the ambiguity, as AlburyCity cannot receive or determine any Development Applications for the subdivision of land with a dual/split zoning where the lots don't meet the minimum lot size requirements of all zones

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applying to a particular development site. As a consequence, a number of Development Applications for large residential subdivisions within Albury's identified growth area have been withdrawn, whilst the amendment to ALEP 2010 is considered. This has the potential to slow or restrict growth, which can have impacts on land supply and land prices.

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

Accordingly, AlburyCity is now seeking to amend ALEP 2010 by including an additional local clause that clarifies the conditions that must be satisfied when subdividing land with a dual/split zoning whilst protecting certain rural, environment protection or waterway zoned land from being further fragmented below the minimum lot size of ALEP 2010, which is consistent with the objectives of these zones, whilst not departing from the intent of ALEP 2010.

Section D - State and Commonwealth Interests

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

The planning proposal is seeking to allow for the subdivision of land with a dual/split zone within designated business, industrial, recreation, residential, rural (with the exception of the RU2 zone) or special purpose zones, whilst protecting certain rural (RU2 zoned), environment protection and waterway zoned land from further fragmentation below the minimum lot size. 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?

The Planning Proposal has been prepared in response to recent discussions with relevant NSW DPE regional staff, however no other consultation has been carried out at this stage with any other State and/or Commonwealth Public Authorities or service providers. Notwithstanding, any consultation requirements will occur in accordance with the Gateway Determination.

It is noted however that as per s.117(2) *Ministerial Direction 4.4(4) – Planning for Bushfire Protection*, requires that where a Planning Proposal affects land identified as being bushfire prone, that consultation must be undertaken with the NSW Rural Fire Service (RFS).

Whilst a number of zones within Albury are identified as being bushfire prone, the subject proposal will not change the existing consent requirements for the development of this land, with respect to bushfire planning. Given that the proposal is not inconsistent with the objectives of this Direction and does not seek to change the zoning of the land, as well as the fact that any proposed developments involving subdivision are still subject to assessment and referral by the NSW RFS under s.100B of the *Rural Fires Act 1997* for the issuing of a Bushfire Safety Authority, consultation with this agency is considered unnecessary in this instance due to the minor impacts of the proposed amendment.

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Similarly, whilst it is acknowledged that ALEP 2010 has previously received conferral of *Biodiversity Certification* by the NSW OEH and the fact that the subject Planning Proposal allows for the subdivision of land with dual/split zoning, the impacts upon the environment are considered negligible. It is noted that since the introduction of ALEP 2010, it was AlburyCity's understanding that where a property contained multiple or dual/split zones, subdivision could be undertaken on this land, where it achieved the minimum lot size requirements of ALEP 2010 and where it did not further fragment existing rural, environmental or waterway zoned land already below the minimum lot size requirements of ALEP 2010, so as to maintain this land in the one ownership for its ongoing management and protection.

This was particularly the case where the majority of a property is zoned residential, but a small portion of the site is zoned either E2 Environmental Conservation or E3 Environmental Management, in recognition of the environmental attributes of that portion of the site. It is only in response to recent legal advice received by Council, as well as recent discussions with relevant NSW DPE regional staff, that AlburyCity became aware that there was ambiguity in regards to the subdivision of land with a dual zone within Albury where it did not meet the minimum lot size requirements of all zones applying to a particular development site. Accordingly, AlburyCity is now seeking to amend ALEP 2010 to allow for the subdivision of dual/split zoned land and the protection of environment protection zoned land from further fragmentation.

Furthermore, whilst the Planning Proposal will affect rural zoned land, AlburyCity believes that consultation with the NSW Department of Primary Industries (DPI) is not required in this instance, as the proposal does not change the minimum subdivision lot size requirements of land. Whilst it is acknowledged that this clause does allow for the subdivision of rural zoned land in the RU1, RU4 and RU5 zones, however this is only where it meets the current minimum lot size requirements already contained within ALEP 2010, which will not fragment rural lands or create land use conflicts over and above current conditions.

It is also noted that the subject proposal does not seek to reduce the zoning of land for rural purposes or change the land use permissibility's of land within a rural zone. It is reiterated that the purpose of the amendment is to clarify the subdivision consent requirements that must be satisfied when subdividing land with a dual/ split zoning, which will therefore have a negligible impact upon Albury's rural zoned land.

However, should consultation be required with any of the above public authorities, due to the urgency involved with the Planning Proposal, the current restriction on development, the very minor nature of the amendment and the fact that this clause is a model local clause prepared by NSW DPE, AlburyCity considers the Planning Proposal to be a 'low impact proposal' and will be seeking a public exhibition period of 14 days only.

It is requested that if any consultation is required with the above agencies, that this be undertaken for the same time period. See Part 5 for further details regarding community consultation.

PART 4 – MAPPING

The proposal does not seek a change in LEP mapping as it only seeks to incorporate Clause 4.1B within Part 4 of ALEP 2010, as it relates to minimum subdivision lot sizes for certain split zones.

Notwithstanding, **Appendix B** of this report contains a city wide land zoning map, showing the zoning of all land across Albury, including those properties that contain a dual or split zoning for information purposes.

PART 5 – COMMUNITY CONSULTATION

The planning proposal will 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).

As outlined above, AlburyCity considers the planning proposal to be a 'low impact proposal' for the purposes of public exhibition and given the urgency involved with the current restrictions on development, would be seeking a public exhibition period for a minimum of 14 days only, due to the relatively minor nature of the proposal, the urgency of the current restrictions on development and the fact that the proposal does not change the zoning or permitted land uses of the existing zones, whilst also not having an adverse impact on services, infrastructure or the environment.

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.

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PART 6 – PROJECT TIMELINE

Table 2 provides a project timeline for the proposed amendment to ALEP 2010.

Table 2 – Project Timeline

No.	Description of Tasks	Task Commencement	Task Completion
1.	Gateway Determination Anticipated Gateway Determination (including any delegated authority)	Late September 2015	Early October 2015
2.	Public Exhibition 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.	Early October 2015	Late October 2015
3.	Consider Submissions & Document Finalisation (only if submissions received) Post public exhibition, 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 October 2015	November 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 November 2015	Early December 2015
5.	Notification Anticipated date LEP will be notified.	December 2015	December 2015

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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	N/A
32	State Environmental Planning Policy – Urban Consolidation (Redevelopment of Urban Land)	Not applicable	N/A
33	State Environmental Planning Policy – Hazardous & Offensive Industry	Not applicable	N/A
36	State Environmental Planning Policy – Manufactured Home Estate	Not applicable	N/A

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No.	SEPP Title	Applicable to Planning Proposal	Consistency
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	Although the proposal does not seek to encourage the development of land of a known habitat protection area, it is noted that the proposed local clause does relate to the subdivision of land, including environment protection zoned land, which could be a potential habitat for koalas. Notwithstanding, the proposal will not adversely affect koala habitats as the proposed clause is a model clause that seeks to allow the subdivision of land with a dual/split zone within designated urban zoned, whilst protecting certain rural, environment protection and waterway zoned land from further fragmentation below the minimum lot size, which will ensure that existing environmental zoned land, which is likely koala habitat is protected and not further fragmented.
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

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No.	SEPP Title	Applicable to Planning Proposal	Consistency
62	State Environmental Planning Policy – Sustainable Aquaculture	Not applicable	N/A
64	State Environmental Planning Policy – Advertising & Signage	Not applicable	N/A
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

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No.	SEPP Title	Applicable to Planning Proposal	Consistency
	State Environmental Planning Policy (Kurnell Peninsula) 1989	No, does not apply to the Albury LGA	N/A
	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: • Does not create land use conflicts within rural areas nor allow opportunities for further fragmentation of rural zoned land, which is already less than the minimum lot size requirements of ALEP 2010; • Protects existing rural zoned land from further land fragmentation; • Facilitates, where appropriate, areas of rural land identified for rural residential/rural lifestyle development in accordance with Council's <i>Draft Rural Lands Strategy for Table Top & Splitters Creek</i>;

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No.	SEPP Title	Applicable to Planning Proposal	Consistency
	State Environmental Planning Policy (Rural Lands) 2008 Cont.		• 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 by clarifying the subdivision requirements of land with a dual/split zoning (including rural zoned land); • Will not create widespread land use conflicts within rural areas and seeks to protect those rural zoned properties that are already below the current minimum lot size requirements of the LEP from further land fragmentation. • 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. 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>; • 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 clarifying the subdivision requirements for land with a dual/split zone;

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No.	SEPP Title	Applicable to Planning Proposal	Consistency
	State Environmental Planning Policy (Rural Lands) 2008 Cont.		• The proposal seeks to maintain and protect existing environment protection and rural zoned land by ensuring that any land already below the minimum lot size requirements of ALEP 2010 are not further fragmented as a result of subdivision and is rather contained wholly within the one ownership for its ongoing management and protection, which will have a positive impact on threatened species and native vegetation; • 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 minimisation of rural land fragmentation and rural land use conflicts, by preventing the further fragmentation/subdivision of land that is already below the minimum lot size requirements of ALEP 2010, which is reflective of the natural and physical constraints of the land. 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.

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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. It is noted that the subject Planning Proposal does seek to change the minimum lot size requirements of land, but rather clarifies the conditions that must be satisfied when subdividing land with a dual/split zoning, which will have a negligible impact upon the Riverine environment.

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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	Yes, as the planning proposal will affect land within business and industrial zones	Consistent, because the planning proposal does not reduce the area of land zoned for business or industrial purposes and does not reduce the total potential floor space for employment, public service or industrial uses. This Direction applies as the Planning Proposal relates to business and industrial zoned land. It is reiterated that the subject Planning Proposal only seeks to allow for the subdivision of land with a dual/split zone (including some business and industrial zoned land), whilst protecting certain rural, environment protection and waterway zoned land from further fragmentation below the minimum lot size. The overall benefits of the Planning Proposal are positive as it will allow for the subdivision of land within these zones (where appropriate and subject to council consent), which is currently prohibited.
1.2	Rural Zones	Yes, as the planning proposal will affect land within a rural zone	Consistent, because the planning proposal does not seek to rezone land from a rural zone to a residential, business, industrial, village or tourist zone or increase the permissible density of land within a rural zone. The subject proposal only seeks to allow for the subdivision of land with a dual/split zone including the subdivision of rural zoned land in the RU1, RU4 and RU5 zones, however this is only where it meets the current minimum lot size requirements already contained within ALEP 2010, which will not fragment rural lands or create land use conflicts over and above current conditions.

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No.	Direction Title	Applicable to Planning Proposal	Consistency
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	Consistent, as the Planning Proposal is consistent with the Rural Planning Principles and Rural Subdivision Principles listed in <i>State Environmental Planning Policy (Rural Lands) 2008</i> as outlined in Table 3 of this report. 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 throughout this proposal, the development is generally consistent with the aims and objectives of this SEPP.
2. Environment and Heritage			
2.1	Environmental Protection Zones	Yes, as the planning proposal will affect land within an environment protection zone	Consistent, as the Planning Proposal does not seek to reduce the area of environment protection zoned land or create any additional provisions that would have a detrimental effect upon environmentally sensitive land. Whilst it is acknowledged that ALEP 2010 has previously received conferral of <i>Biodiversity Certification</i> by the NSW Office of Environment and Heritage (OEH) and the fact that the subject Planning Proposal allows for the subdivision of land with dual/split zoning, the impacts upon the environment are considered negligible. It is noted that since the introduction of ALEP 2010, it was AlburyCity's understanding that where a property

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No.	Direction Title	Applicable to Planning Proposal	Consistency
2.1	Environmental Protection Zones Cont.		contained multiple or dual/split zones, subdivision could be undertaken on this land, where it achieved the minimum lot size requirements of ALEP 2010 and where it did not further fragment existing environmental or rural zoned land already below the minimum lot size requirements of ALEP 2010, so as to maintain this land in the one ownership for its ongoing management and protection. This was particularly the case where the majority of a property is zoned residential, but a small portion of the site is zoned either E2 Environmental Conservation or E3 Environmental Management, in recognition of the environmental attributes of that portion of the site. It is only in response to recent legal advice received by Council, as well as recent discussions with relevant NSW DPE regional staff, that AlburyCity became aware that there was ambiguity in regards to the subdivision of land with a dual zone where it did not meet the minimum lot size requirements of <u>all</u> zones applying to a particular development site. Accordingly, AlburyCity is now seeking to amend ALEP 2010 to allow for the subdivision of dual/split zoned land and the protection of environment protection zoned land from further fragmentation, which is consistent with the objectives of this Direction and previous commitments and agreements with the NSW OEH, as part of the <i>Biodiversity Certification</i> of ALEP 2010.
2.2	Coastal Protection	No (does not apply to land in Albury LGA)	N/A

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No.	Direction Title	Applicable to Planning Proposal	Consistency
2.3	Heritage Conservation	Yes, as the planning proposal will affect a number of zones identified as individual heritage items or as part of a heritage conservation area.	Not applicable as the subject Planning Proposal does not change a provision relating to heritage items or heritage conservation areas, nor does it specifically relate to a heritage item or heritage conservation area. Nonetheless, it is noted that a number of zones across Albury, are either identified as individual heritage items or as part of a heritage conservation areas. This is considered satisfactory in this instance; however as the proposed inclusion of the model clause only seeks to clarify the subdivision consent requirements that must be satisfied when subdividing land with a dual/ split zoning, which will have a negligible impact upon heritage. It is also noted that the heritage requirements of Clause 5.10 of ALEP 2010 will still apply, as well those contained within Part 7 – Heritage Conservation of ADCP 2010 and those requirements contained within the <i>Heritage Act 1977</i>.
2.4	Recreation Vehicle Areas	Not applicable	N/A
3. Housing, Infrastructure and Urban Development			
3.1	Residential Zones	Yes, as the planning proposal will affect land within a residential zone	Consistent, as the Planning Proposal does not reduce the area of land zoned for residential purposes nor reduce the permissible residential density of land. This Planning Proposal also achieves the objectives of this Direction as it: • Minimises the impact of residential development on the environment and resource land...

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No.	Direction Title	Applicable to Planning Proposal	Consistency
3.1	Residential Zones Cont.		The proposed inclusion of Clause 4.1B into ALEP 2010 is consistent with this Direction as it seeks to permit the subdivision of land with a dual/split zone within residential zones, whilst protecting rural, environment protection and waterway zoned land from being further fragmented, which is currently prohibited. At present the implications of not amending ALEP 2010 are significant due to the ambiguity, as AlburyCity cannot receive or determine any Development Applications for the subdivision of land with a dual/split zoning where the lots don't meet the minimum lot size requirements of <u>all</u> zones applying to a particular development site. As a consequence, a number of Development Applications for large residential subdivisions have been withdrawn, whilst AlburyCity considers an amendment to ALEP 2010. This has the potential to slow or restrict growth, which can have impacts on land supply and land prices. Accordingly, the subject amendment seeks to correct this current anomaly, which is consistent with the objectives of this Direction.
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	Yes because the planning proposal affects urban land zoned including land zoned for residential, business, industrial, village or tourist purposes.	Consistent because the planning proposal has regard for the two DUAP documents referenced in this Direction and does not seek to change the zoning of land or a provision that creates additional land use or subdivision opportunities of land. It is reiterate the subject proposal only seeks to clarify the subdivision consent requirements that must be satisfied when subdividing land with a dual/ split zoning.

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No.	Direction Title	Applicable to Planning Proposal	Consistency
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 clarify the subdivision consent requirements that must be satisfied when subdividing land with a dual/ split zoning. It is noted that this Direction only applies as it relates to zoned land within 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 use or subdivision opportunities of land surrounding the Albury Airport.
3.6	Shooting Ranges	Not applicable	N/A
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 affects 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 a number of zones within Albury 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, as these properties are already zoned for these purposes and the proposed amendment does not permit any additional land use or subdivision opportunities of land classified as being flood prone above current conditions.

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No.	Direction Title	Applicable to Planning Proposal	Consistency
4.3	Flood Prone Land Cont.		The proposal also maintains normal assessment, referral and concurrence requirements for the 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. It is reiterated that the subject Planning Proposal only seeks to allow for the subdivision of land with a dual/split zone, whilst protecting certain rural, environment protection and waterway zoned land from further fragmentation below the minimum lot size, which will not have an adverse impact upon flood prone land.
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. It is noted that this Direction only applies, due to the fact that a number of zones within Albury are designated as being within a bushfire prone area. Notwithstanding, the proposal 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>, in particular s.100B of this Act when subdividing bushfire prone land. It is reiterated that the subject Planning Proposal only seeks to allow for the subdivision of land with a dual/split zone, whilst protecting certain rural, environment protection and waterway zoned land from further fragmentation below the minimum lot size, which will not have an adverse impact upon bushfire prone land.

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No.	Direction Title	Applicable to Planning Proposal	Consistency
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
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, applies to all relevant Planning Authorities	Consistent, as the Planning Proposal is not proposing to add any provisions which require referral of Development Applications to the Minister.

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No.	Direction Title	Applicable to Planning Proposal	Consistency
6.2	Reserving Land for Public Purposes	Yes because the planning proposal affects land reserved for public purposes	Consistent, as the Planning Proposal does not create, alter or reduce existing zonings or reservations of land for public purposes and only seeks to clarify the subdivision consent requirements that must be satisfied when subdividing land with a dual/split zoning.
6.3	Site Specific Provisions	Not applicable	N/A
7. Metropolitan Planning			
7.1	Implementation of Metropolitan Strategy	Not applicable	N/A