

AlburyCity – Planning & Development Committee AGENDA

6B Albury Local Environmental Plan 2010 – Planning Proposal: Inclusion of Model Split Zones Clause (DOC15/81232)

DATE 28 August 2015

CONFIDENTIAL

Personnel Matters ☐

YES ☐

Commercial ☐

NO ☒

Legal ☐

If yes please tick one of the following reasons

Security ☐

Personal Hardship ☐

ITEM FOR DECISION ☒

Meeting Date 14 September 2015

ITEM FOR NOTING ☐

Meeting Date

FURTHER ENQUIRIES TO Matt Johnson
Planning & Environment

PHONE 6023 8173

Purpose of Report

The purpose of this report is to seek the Committee's support for a Planning Proposal that seeks to amend the *Albury Local Environmental Plan 2010* (ALEP 2010) to include a new model provision that facilitates the subdivision of land with a dual/split zoning.

The amendment proposes to include Clause 4.1B *Minimum subdivision lot sizes for certain split zones* as it applies to all dual/split zoned land within Albury. A copy of the split zone model clause is provided as *Attachment 1* for Councillors information.

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

Background

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.

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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 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.

Further advice received from NSW Department of Planning & Environment 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.

The proposal therefore seeks to amend ALEP 2010 by including an additional local clause that permits the subdivision of land with a dual/split zone within designated residential, business or industrial zones, whilst protecting certain rural, environment protection or waterway zoned land from being further fragmented below the minimum lot size of ALEP 2010.

Issues

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

- *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;*

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- *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 permit the subdivision of land with a dual/split zone within designated residential, business or industrial zones, whilst protecting rural, environment protection and waterway zoned land from being further fragmented by retaining it in the one ownership for its ongoing management and protection.

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 sensitivities of the land as a result of further fragmentation and ownership/management across multiple landowners.

The issue of land fragmentation is also important in a rural context given the amount of rural zoned land across Albury and the impacts that further land fragmentation could create with regards to land use conflicts between different land uses and the viability of current agriculture and primary production activities. The impacts of this could be significant. The subject proposal is consistent with a number of rural planning instruments and controls including; *State Environmental Planning Policy (Rural Lands) 2008*, Section 117(2) Ministerial Directions 1.2 – *Rural Zones* and 1.5 – *Rural Lands*, as well as the recommendations contained within the draft *Rural Lands Strategy for Table Top & Splitters Creek*.

The proposed inclusion of Clause 4.1B does not derogate from the aims and objectives of the *Environmental Planning & Assessment Act 1979*, the NSW Department of Planning's; *Guide to Preparing Local Environmental Plans* and *Guide to Preparing Planning Proposals*, the *Thurgoona Wirlinga Precinct Structure Plan*, as well as Council's previous Biodiversity Certification Agreement with the NSW Office of Environment and Heritage.

Discussion

AlburyCity is seeking 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.

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The proposed amendment seeks to amend ALEP 2010 by including an additional model clause that clarifies that land can be subdivided where it has a dual zone, within designated residential, business or industrial zones, so long as it meets the minimum lot size requirements of these zones and where it contains certain rural, environment protection or waterway zoned land, which is already below the minimum lot size, that this land is not further fragmented and is retained in the one ownership for its ongoing management and protection.

It is reiterated that at the time of preparing ALEP 2010, there were no directions, guidelines or model local clauses for Councils 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 Department of Planning & Environment 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 councils 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;

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 residential, business and industrial zones, whilst protecting certain rural, environment protection and waterway zoned land from further fragmentation below the minimum lot size, the impacts of the proposal are considered minor.

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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 will not 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 applying to a particular development site. 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 permits the subdivision of land with a dual/split zone within designated residential, business and industrial zones, whilst protecting certain rural, environment protection and waterway zoned land, which is consistent with the objectives of these zones, whilst not departing from the intent of ALEP 2010.

Risk

- Business Risk

The level of business risk associated with the Planning Proposal is considered low. The proposed amendment is in response to recent advice received from NSW Department of Planning & Environment regional staff confirming the ambiguity regarding Development Applications for the subdivision of land with a dual/split zoning, where it does not comply with the minimum lot size requirements of all zones applying to a particular development site. The amendment will enable AlburyCity to consider and determine these applications.

- Public Risk

The level of public risk associated with the Planning Proposal is considered low. Nonetheless, in the absence of amending ALEP 2010, AlburyCity will not accept or determine any Development Applications for the subdivision of land with a dual/split zoning, where it does not comply with the minimum lot size requirements of all zones applying to a particular development site.

The implications and consequences of this are significant for these landowners in the absence of an amendment to ALEP 2010. As a consequence, a number of Development Applications for large residential subdivisions have been withdrawn, whilst the amendment to ALEP 2010 is considered.

By amending ALEP 2010, this will enable AlburyCity to accept and determine Development Applications for the subdivision of land with multiple or dual/split zones, which is currently causing issues for Albury's development industry.

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Community Engagement

The proposed changes are considered to be of public interest and accordingly an appropriate level of community engagement is warranted. The formal public exhibition process will be based on a separate Community Engagement Plan inclusive of a table detailing engagement techniques and timeframes. A copy of this Table has been included with this report and marked as *Attachment 3* for the reference and information of Councillors.

The communications table includes provision for the following activities:

- Notification letters dispatched to key stakeholders and interested parties prior to exhibition commencement;
- Public notice published in the Border Mail;
- Static displays containing all exhibition material for viewing purposes in the foyer of the Council Administration Building, LibraryMuseum and Lavington Library;
- All exhibition material being made available on the AlburyCity website including the ability to make an electronic submission also being made available on the AlburyCity website;
- Consultation and discussion with relevant Government Agency representatives; and
- Strategic Planning staff available (on demand or by appointment) to assist with any inquiries relating to the Planning Proposal.

Options

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

1. Endorse the Planning Proposal that seeks to include Clause 4.1B into Part 4 of ALEP 2010 as it relates to minimum subdivision lot sizes for certain split zones and forward this to the NSW Department of Planning & Environment seeking Gateway Determination; OR
2. Take no further action with regards to the Planning Proposal and the proposed amendment.

In this instance, it is recommended that the Committee proceed with Option 1 for the reasons outlined in this report.

Conclusion

The Planning Proposal seeks to amend Part 4 of ALEP 2010 by including Clause 4.1B *Minimum subdivision lot sizes for certain split zones*, to allow for the subdivision of land which has a dual/split zone, which is currently prohibited.

The Planning Proposal has been prepared following recent advice confirming the ambiguity around Development Applications for the subdivision of land with a dual/split zone, where they do not meet the minimum lot size requirements of all zones applying to a particular development site.

The implications and consequences of this are significant in the absence of an amendment to ALEP 2010. As a consequence, a number of Development Applications for large residential subdivisions have been withdrawn, whilst AlburyCity considers an amendment to ALEP 2010.

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

Recommendation

That the Committee recommends to Council that Council:

- a. Endorse the Planning Proposal and forward it to the Minister for Planning seeking an amendment to the *Albury Local Environmental Plan 2010* so as to include Clause 4.1B into Part 4 of this Plan, as it relates to minimum subdivision lot sizes for certain split zones and request that a Gateway Determination be issued, including the delegation of Plan making powers, so as to enable the public exhibition of the Planning Proposal pursuant to the *Environmental Planning & Assessment Act 1979*; and
- b. Upon receipt of a Gateway Determination under Section 56 of the *Environmental Planning & Assessment Act 1979*, Council place the Planning Proposal and any supporting material on public exhibition pursuant to any requirements of the Gateway Determination and Section 57 of the *Environmental Planning & Assessment Act 1979*; and
- c. Should no objections be received during public exhibition, furnish a copy of this report and any other relevant information to the NSW Department of Planning and Environment and/or NSW Parliamentary Counsels Office, in accordance with the *Environmental Planning & Assessment Act 1979*, and request the Minister for Planning (or a delegate on their behalf) undertake the appropriate actions to secure the making of the amendment to the *Albury Local Environmental Plan 2010* that seeks to include Clause 4.1B into Part 4 of this Plan as it relates to minimum subdivision lot sizes for certain split zones.

- **Attachments**

1. Draft Clause 4.1B Minimum subdivision lot sizes for certain split zones;
2. 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 (September 2015);
3. Community Engagement Plan.

Planning & Development Committee MINUTES

Disclosures of Political Donations

There were no Disclosures of Political Donations received by the Chair.

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Cr Docksey Moved, Cr Thurley Seconded

That the Committee recommends to Council that Council:

- a. Endorse the Planning Proposal and forward it to the Minister for Planning seeking an amendment to the *Albury Local Environmental Plan 2010* so as to include Clause 4.1B into Part 4 of this Plan, as it relates to minimum subdivision lot sizes for certain split zones and request that a Gateway Determination be issued, including the delegation of Plan making powers, so as to enable the public exhibition of the Planning Proposal pursuant to the *Environmental Planning & Assessment Act 1979*; and
- b. Upon receipt of a Gateway Determination under Section 56 of the *Environmental Planning & Assessment Act 1979*, Council place the Planning Proposal and any supporting material on public exhibition pursuant to any requirements of the Gateway Determination and Section 57 of the *Environmental Planning & Assessment Act 1979*; and
- c. Should no objections be received during public exhibition, furnish a copy of this report and any other relevant information to the NSW Department of Planning and Environment and/or NSW Parliamentary Counsels Office, in accordance with the *Environmental Planning & Assessment Act 1979*, and request the Minister for Planning (or a delegate on their behalf) undertake the appropriate actions to secure the making of the amendment to the *Albury Local Environmental Plan 2010* that seeks to include Clause 4.1B into Part 4 of this Plan as it relates to minimum subdivision lot sizes for certain split zones.

CARRIED

FOR

Cr Daryl Betteridge
Cr Graham Docksey
Cr Alice Glachan
Cr Patricia Gould
Cr Ross Jackson
Cr David Thurley
Cr Henk van de Ven

AGAINST

Nil.