

AlburyCity – Planning & Development Committee

AGENDA

PDC 6 – REPORTS FOR DISCUSSION

6A Albury Local Environmental Plan 2010 – Planning Proposal Milro Avenue, East Albury and Part Albury Art Gallery – Reclassification of Council Owned Land (FIL12/00699)

DATE 16 April 2012

CONFIDENTIAL YES ☐ NO ☒ If yes please tick one of the following reasons
Personnel Matters ☐ Commercial ☐ Legal ☐ Security ☐ Personal Hardship ☐

MEETING DATE Monday 21 May 2012

FURTHER ENQUIRIES TO Matt Johnson PHONE 6023 8285
Planning & Environment

Introduction

The purpose of this report is to seek Council resolution to endorse a Planning Proposal that seeks to amend the *Albury Local Environmental Plan 2010* (ALEP 2010) so as to reclassify Lot 33, DP 21896, Milro Avenue, East Albury and Lot 25, DP 1169423, Part Albury Art Gallery – 546 Dean Street, Albury (subject sites) from 'Community' land to 'Operational' land and undertake those actions necessary to publicly exhibit the Planning Proposal.

A copy of the Planning Proposal is provided as *Attachment 1* to this report.

Background

AlburyCity has recently been in discussions with the owners of 498 Milro Avenue, East Albury regarding the location of a Council 'drainage reserve' that currently bisects a portion of their property, effectively dividing it in two. When the original subdivision plan for 'Eastern Heights Estate' (which Milro Avenue is a part of) was approved on 29 September 1949, the subject site was classified as a 'drainage reserve' under the requirements of the *Local Government Act 1919* and became the ownership of the original subdivider.

Notwithstanding, under Section 50(4) and (5) of the *Local Government Act 1993*, where a drainage reserve was created after 24 November 1922 and before 15 June 1964, a local council may publish a notice in the NSW Government Gazette notifying that the land is vested in the council for drainage purposes. The public notice to this effect was published in NSW Government Gazette No. 74 dated 11 June 2010 and Council became the owner of the subject site with the land classified as 'Community'.

Upon ownership of this land and following discussions with the landowners of 498 Milro Avenue, AlburyCity agreed to extinguish the drainage reserve and relocate this infrastructure around the perimeter of the site, subject to the imposition of an easement being created to that effect for its ongoing protection and maintenance.

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It was also agreed that AlburyCity would begin the process of reclassifying the subject site from 'Community' to 'Operational' and sell the subject site for a 'peppercorn agreement' (nominal fee) to the landowners of 498 Milro Avenue, which has resulted in the subject planning proposal.

Similarly, AlburyCity Council were also recently informed by the NSW Land Titles Office that it is the owner of Lot 25, DP 1169423, being 546 Dean Street (Part of the north west corner of the Albury Art Gallery). Upon further investigations of this site it was discovered that the subject land is classified as 'Community' land and is dedicated as a 'Town Hall' in accordance with NSW Government Gazette No. 63 dated 30 May 1969.

It is noted that in 2009 AlburyCity endorsed an Albury CBD Masterplan that sought to provide amongst other things a long term planning framework for the Albury CBD and encourage and improve public open spaces. As part of the outcomes of this Masterplan, it was recommended that the adjoining QEII Square and the cultural precinct, in which the Albury Art Gallery is located, should be revitalised consistent with AlburyCity's Cultural Precinct Masterplan.

Consistent with the recommendations of these Masterplans, AlburyCity recently lodged development application 10.2012.31460.1 for a \$10.5M redevelopment of the Albury Art Gallery. Amongst other things the redevelopment sought to increase the space within the gallery, create two new entrances from QEII Square and Burrows House (one of which is through the subject site) and to create a new gallery café that will open out into QEII Square.

Accordingly, given the current and proposed future uses of the subject site for art gallery and café purposes, the site needs to be reclassified from 'Community' to 'Operational' land and reference to 'Town Hall' needs to be removed from its title to facilitate the ongoing development and use of this site. It is noted that AlburyCity does not propose to sell this parcel of land upon its reclassification due to its current and future use as part of the Albury Art Gallery.

The subject sites are currently zoned R1 General Residential and B3 Commercial Core respectively under ALEP 2010 and are used for residential and community (Art Gallery) purposes. Accordingly, the main purpose of the reclassifications are to ensure that the sites can be used consistent with the surrounding land uses (i.e. residential and community purposes) now and into the future.

Property under Consideration

The subject sites are described as follows:

Lot 33, DP 21896 is a 2m wide Council-owned drainage reserve that is approximately 92.65m² in size that currently traverses 498 Milro Avenue, East Albury (Lot 31, DP 21896) bisecting this property from the north east to the south, excising approximately 15% of this residential property.

Lot 25, DP 1169423 is situated at the rear (North West corner) of the Albury Art Gallery and is bordered by St Matthews Church and QEII Square to the North, the Albury Art Gallery to the East and South and Burrows House to the West. The site is a small (56.9m²) triangular shaped parcel of land,

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which can be accessed from the rear of Burrows House and a laneway that adjoins the Albury Art Gallery directly to the north.

A locality plan has been provided as *Attachment 2* to this report to show the location of these sites.

Process of Reclassifying Community Land

The *Local Government Act 1993* (LG Act) requires that all public land under the control of Council should be classified as either 'Community' or 'Operational'. In simple terms, 'Community' land is that used to identify land managed by Council for a public use, such as a library or park, while 'Operational' land is used to identify land owned by Council that can be held as a temporary asset or used to generate a commercial return (including its sale).

Under the *Local Government Act 1993* a Council has no power to sell, exchange or otherwise dispose of 'Community' land. However, in circumstances determined by that Act, Council may pass a resolution to reclassify land from 'Community' to 'Operational' allowing it to be disposed of, if appropriate. It is noted that Council has tacitly agreed to sell Lot 33, DP 21896, Milro Avenue, East Albury for a 'peppercorn agreement' (nominal fee) to the landowners of 498 Milro Avenue, but has no intention or plan to sell Lot 25, DP 1169423, Part Albury Art Gallery – 546 Dean Street, Albury due to its current and future use as part of the Albury Art Gallery.

The process of reclassifying land from Community to Operational is as follows:

Local Government Act 1993

The LG Act is the principle legislation concerned with the classification and management of public land. The mechanism for reclassifying Council owned public land is the Local Environmental Plan (LEP) and hence the LG Act defers to the *Environmental Planning and Assessment Act 1979* (EP&A Act) for this process (see below). The LG Act does have some direct influence on the LEP process such as the mandatory requirement for a public hearing.

Accordingly, Section 29 of the LG Act requires that a public hearing be conducted to discuss the reclassification proposal as it relates to the reclassification of Community land. This public hearing is required to be conducted within 28 days following the conclusion of the public exhibition period.

Environmental Planning & Assessment Act 1979

The EP&A Act is the principle legislation concerned with the processes of reclassification and rezoning proposals, as well as, considering development matters.

The EP&A Act, in concert with the *Environmental Planning and Assessment Regulations 2000*, specifies the process by which amendments to LEP's should be prepared, notified, exhibited and reported.

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In July 2009, the NSW Government changed the way that LEPs are developed and approved due to an amendment to Part 3 of the EP&A Act. This system is known as the 'Gateway' plan-making process and now requires the preparation of a 'Planning Proposal' for any requested amendments to LEPs.

NSW Department of Planning LEP Practice Note

In June 2009, the NSW Department of Planning (DoP) released *LEP Practice Note PN 09-003* regarding the classification and reclassification of public land through a LEP (LEP Practice Note). This guideline superseded previous Department of Urban Affairs and Planning guidelines and is now the sole reference document used to help Council's preparing amendments to LEP's that deal with their own land. The purpose of the LEP Practice Note is to ensure transparency in the process where Council is both the owner of the land and the authority for changing the zoning, classification or some other provision of the local planning instrument (i.e. the LEP).

Whilst not a statutory requirement, the LEP Practice Note sets out a process (in addition to the requirements of the EP&A Act) that Council's should follow when preparing their own LEP's. When an amendment to an LEP is exhibited, the LEP Practice Note requires a list of information to be placed on exhibition.

All documentation and procedures are to be prepared and undertaken respectively in relation to this Planning Proposal and will comply with relevant legislative and LEP Practice Note requirements.

Conclusion

The proposal seeks to reclassify the subject sites from 'community land' to 'operational land' to reflect previous agreements between AlburyCity and the landowners of 498 Milro Avenue, East Albury regarding the relocation and extinguishment of a council drainage reserve, as well as catering for the ongoing development and redevelopment of the Albury Art Gallery.

Whilst AlburyCity does intend to sell Lot 33, DP 21896 upon reclassification to the landowners of 498 Milro Avenue, East Albury the practical benefits of this proposal will be significant for this landowner as the existing council drainage reserve currently bisects the rear of their property. Conversely, it is also noted that AlburyCity does not propose to sell Lot 25, DP 1169423 upon reclassification as it will continue to be used for community, cultural and open space purposes as part of the current and future operations of the Albury Art Gallery.

For these reasons Council endorsement of the Planning Proposal is sought to progress this matter, as well as to undertake the appropriate actions in order to secure the reclassification of the subject sites, which will allow for the more flexible use of these sites.

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Recommendation

That the Committee recommends to Council that Council:

- a. forward a Planning Proposal to the Minister for Planning & Infrastructure seeking an Amendment to the Albury Local Environmental Plan 2010 to reclassify Lot 33, DP 21896, Milro Avenue, East Albury and Lot 25, DP 1169423, Part Albury Art Gallery – 546 Dean Street, Albury from ‘community land’ to ‘operational land’ and request that a Gateway Determination be made, enabling the exhibition of the Planning Proposal pursuant to Section 29 of the Local Government Act 1993 and the Environmental Planning and Assessment Act 1979, as amended;
 - b. upon receipt of a Gateway Determination under Section 56 of the Environmental Planning & Assessment Act 1979, place the Planning Proposal on public exhibition pursuant to any requirements of the Gateway Determination, Section 57 of the Environmental Planning & Assessment Act 1979, in accordance with ‘LEP Practice Note: Classification and reclassification of public land through a local environmental plan’ dated 12 June 2009 and the Local Government Act 1993;
 - c. conduct a Public Hearing no less than 28 days after the Public Exhibition period in accordance with Section 29 of the LG Act, and
 - d. should no objections be received, furnish a copy of this report and other relevant information to the NSW Department of Planning and Infrastructure, in accordance with the EP&A Act, and request the Minister for Planning & Infrastructure undertake appropriate actions to secure the making of the Amendment to the Albury Local Environmental Plan 2010 to the extent that it seeks to reclassify Lot 33, DP 21896, Milro Avenue, East Albury and Lot 25, DP 1169423, Part Albury Art Gallery – 546 Dean Street, Albury from ‘Community’ land to ‘Operational’ land.
- **Attachments**
 1. Planning Proposal – Reclassification of land from Community to Operational, Part QEII Square – 530 Kiewa Street, Albury (*to be tabled*);
 2. Locality Plans – Milro Avenue, East Albury and Part Albury Art Gallery – 546 Dean Street, Albury.